

RAB-87-07

SUW

Computer Software

(Replaced by RAB 88-41)



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
TREASURY BUILDING
LANSING, MICHIGAN 48922

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SALES AND USE TAX - COMPUTER SOFTWARE

RAB 87-7. The Michigan Department of Treasury has established the following guidelines for taxability of computer software.

Canned Software

A sale of canned software is a sale of tangible personal property and is subject to sales or use tax. Canned software is any program or set of programs that can be purchased and used without modifications.

Canned programs may be sold on computer cards, disks, tapes, or other data processing storage media as printed material or transmitted via communication devices. Some examples of canned programs are: MacWrite, Lisa, Electric Desk, MacPhone, MegaMerge, Soft Maker II, IBM Writing Assistant, Word Proof, Bank Street Writer III, Display Write I, Crossfire, Kings Quest, MacVegas, Fun Pack, MacEdge, etc.

Customized Software

A sale of customized software is not considered a sale of tangible personal property and is not subject to sales or use tax. Customized software is any program or set of programs designed and written specifically for a particular user. It also includes any prewritten programs that must be modified before they can perform their intended functions. Modifications must be made to the actual program code. Modification includes changes to source code or programming languages that are necessary to make the software fulfill its intended function. Selection of program alternatives through menu-driven interrogatory is not considered modification of program code. Modification for license protection is not considered custom programming. Also, training and implementation assistance are not considered modification of the software.

The modifications to prewritten programs may be made by the seller or the purchaser. Documentation of required modifications to the program must be retained to verify and substantiate any exemption claim, regardless of who performs the modification. Acceptable documentation includes:

1. Listing of original program code and listing of modifications made to program code
2. Invoice(s) showing services rendered for modification.

License Agreements

A license agreement of canned software is considered a leasing contract and is subject to use tax. (Please see SUW 84-006, Lessors.) A license agreement of custom software is not considered a lease of tangible personal property and is not subject to use tax.

Enhancements

Enhancements and upgrading of canned software are subject to tax. Enhancements and upgrading of custom software are not taxable.

The statutory authority for this position is found in MCL 205.51 et seq. (Sales Tax Act) and MCL 205.91 et seq. (Use Tax Act).

Relevant case law further defines and clarifies the Department's position:

Detroit Automobile Inter-Insurance Exchange v Department of Treasury and the Taubman Company, Inc. v Department of Treasury. 138 Mich App 696(1984).

Maccabees Mutual Life Insurance Company v Department of Treasury and City National Bank of Detroit v Department of Treasury. 122 Mich App 660(1982), 332 NW2d 561(1982).

University Microfilms v Scio Twp., 76 Mich App 616, 619-620; 257 NW2d(1977).