

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100203	Sales and Use Tax Treatment Computer - Hardware, Software, Services (March 6, 2009 Through September 30, 2009) – Common Questions

State of Wisconsin
Department of Revenue


Sales and Use Tax Treatment Computer - Hardware, Software, Services (March 6, 2009 Through September 30, 2009)

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

For Sales Occurring From March 6, 2009 Through September 30, 2009

Sales of computer hardware, software or computer related services on and after October 1, 2009.

Sales of computer hardware, software or computer related services prior to March 6, 2009.

A summary of the tax treatment of sales of computer software and computer software maintenance contracts both prior to and on or after March 6, 2009,  is available as a chart.

1. What computer hardware, software, and services are taxable?
 - a. Prewritten Computer Software
 - b. Taxable Sales
 - c. Nontaxable Sales
2. Does a company have to pay sales tax on software that it obtains over the internet?
3. What happens on October 1, 2009?

1. **What computer hardware, software, and services are taxable?**

There are two major sales and use tax provisions that relate to the sales and use tax treatment of computer hardware, software and services:

- o The sale of tangible personal property is subject to Wisconsin sales or use tax, unless an exemption applies. As of March 6, 2009, tangible personal property is defined to include prewritten computer software, regardless of how it is delivered to the purchaser. Therefore,

the sale, license, lease, or rental of computer hardware and prewritten computer software is subject to Wisconsin sales or use tax.

- o The repair, service, alteration, fitting, cleaning, painting, coating, towing, maintenance, and inspection of tangible personal property is also subject to Wisconsin sales or use tax.

a. **Prewritten Computer Software**

Effective beginning March 6, 2009 and thereafter, the following definition applies for Wisconsin sales and use tax purposes:

"Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of 2 or more "prewritten computer software" programs or prewritten portions of computer software does not cause the combination to be other than "prewritten computer software." "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser if it is sold to a person other than the specific purchaser. For purposes of this subsection, if a person modifies or enhances computer software of which the person is not the author or creator, the person is the author or creator only of the person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of computer software that is modified or enhanced to any degree, with regard to a modification or enhancement that is designed and developed to the specifications of a specific purchaser, remains "prewritten computer software," except that if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement is not "prewritten computer software."

b. **Taxable Sales**

Charges to customers for the following services are subject to Wisconsin sales or use tax:

- Installation and setup of computer hardware
- Installation of hardware devices (including printers, hard drives, modems, monitors, etc.)
- Installation of prewritten computer software
- Configuration of prewritten computer software
- Online or on-site troubleshooting of hardware problems
- Online or on-site troubleshooting of prewritten computer software
- Setting up hardware and prewritten computer software on network
- Making adjustments to prewritten computer software via modem
- Inspection of hardware and prewritten computer software
- Consulting and design services provided in connection with the sale of computer hardware and prewritten computer software
- Internet access services that originate or terminate in Wisconsin and are charged to a service address in Wisconsin.

Example 1: Company A charges a flat monthly fee to both "dial-up" customers (that is, customers that use local access and long-distance telephone companies to connect to Company A) and "dedicated-line" customers (that is, customers who have a direct line to Company A) for providing access to the internet. Customers have an unlimited number of usage hours and/or access. The monthly

fee is for providing access to the internet which is a telecommunications service that is subject to tax if it originates or terminates in Wisconsin and is charged to a service address in Wisconsin.

Example 2: Assume the same facts as Example 1, except that Company A charges an hourly rate in addition to a flat monthly charge. For example, Company A charges a customer \$12.95 per month plus \$2 per hour for every hour of access or usage in excess of 8 hours. The monthly and hourly charges are for providing access to the internet which is a telecommunications service that is subject to tax if the service originates or terminates in Wisconsin and is charged to a service address in Wisconsin.

- Installation or hook-up charges relating to internet access services that originate or terminate in Wisconsin and are charged to a service address in Wisconsin.

Example: Company B, an internet service provider, charges customers who subscribe for access services a one-time fee for installation and connection required for providing access to the internet. The installation charge is part of the gross receipts for providing access to the internet and is subject to Wisconsin sales or use tax in the same manner as the access charges.

- The sale of finished art to a customer where the customer takes possession of the finished art and then has a third party or itself transmit the finished art to a server of an internet service provider.

Example: Company A is an advertising agency. Company A designs the information that will appear on Company B's website in the form of graphics and text. Company A provides this design work (that is, finished art) to Company B. Company B gives the finished art to Company C (paper copy or diskette), an internet service provider. Company C transforms the finished art into a point-and-click interface that allows others to access the information from the website and print out the information desired. The charge by Company A to Company B for the finished art is subject to Wisconsin sales or use tax.

- Sales of textbooks and manuals
- Photographic services

Example: Company C provides internet-related services to real estate professionals. One of its services involves taking photographs of homes that are for sale. The photographs include 360-degree pictures of rooms or fronts of properties that give a "virtual tour" of the customer's property. The photographs are electronically transferred by the photographer to the customer's website where the photographs can be viewed by potential purchasers of homes. The charge by Company C to the real estate professional for photographic services (taking the photographs and reproducing them on the internet) is subject to Wisconsin sales or use tax.

c. Nontaxable Sales

Charges to customers for the following services are not subject to Wisconsin sales or use tax:

- Writing computer software other than prewritten computer software
- Making modifications or enhancements to prewritten computer software that are designed and developed to the specifications of a specific purchaser, and the person

making the modifications or enhancements makes a reasonable, separately stated charge or gives an invoice or other statement of the price to the purchaser for the modification or enhancement

- Installing computer software other than prewritten computer software
- Updating computer software other than prewritten computer software
- Training people on how to use software or hardware
- Writing queries of databases
- Designing screens, forms, reports, or menus
- Answering people's questions
- Reformatting data
- Data conversion
- Data recovery
- Making backups of data files
- Network assessment services that consist of network analysis and evaluation unrelated to a specific hardware or software problem and unrelated to the sale of computer hardware or computer software
- Hosting websites (that is, the storing of data on a computer) without selling any tangible personal property is a nontaxable service. Only specific services are subject to the Wisconsin sales tax (such as photographic services or telecommunications services, including internet access). Likewise, domain name registration and site maintenance/update services are not subject to sales tax if no tangible personal property is transferred or taxable service performed.
- Designing websites and home pages (no tangible personal property transferred to customer).

Website design is not among the services subject to Wisconsin sales tax if no tangible personal property is transferred or the service is not primarily a photographic service. If the completed website (that is, graphic design work) is transferred to the customer in an intangible format (for example, sent electronically via email), the charge for the electronic file, including design work, is not subject to tax. However, if the completed website is transferred to the customer in a tangible format (for example, paper copy, diskette), it is considered to be a sale of tangible personal property (that is, finished art). The entire charge for the sale of the finished art, including planning and design, is subject to tax unless an exemption applies.

Example: Customers supply an advertising agency or similar design company with information that is transformed into a point-and-click interface that allows others to access the information from a home page or website and print out the information desired. Specifically, a client tells the designer the information it wishes to advertise. A computer is used to create the words and graphics. The finished art created on the computer is transmitted by the advertising agency or similar design company electronically via email to a server and can be accessed through the internet. No tangible personal property is transferred to the client. The charge to the client is not subject to tax.

- Website database charges.
Example: Company B, an internet service provider, sets up Company C with a database that can be accessed by other internet users. Company B charges Company C a set-up charge and per-megabyte storage charge. The charge also

covers the administrative costs relating to the domain name registration for the website. The charges by Company B to Company C for database set-up or storage are not subject to Wisconsin sales or use tax.

- Charges for providing advertising or listing space on a website.

Example 1: Company A is a start-up internet business that acts as a website. The function of this website is to provide a starting place in a local area for information and services. It functions like a newspaper, business directory, and local shopper. Company A will be selling listing and ad space for the website for profit. The charge by Company A for listing and ad space is not subject to Wisconsin sales or use tax.

Example 2: Company C has developed a real estate listing service that will provide both public organizations and private individuals with a means of advertising on the internet. The electronic listing service will utilize a "hyperlink" concept that will begin with a home page and allow the user to link to other sections of the listing service and other site locations on the internet. Company C generates revenue by charging sellers of real estate for listing properties with Company C. The charge by Company C for listing properties is not subject to Wisconsin sales or use tax.

- Access services that will be resold.

Example: Company A is an internet access provider located in Wisconsin. Company A provides internet access to Company B, an internet Services Provider (ISP). Company B provides this access to end users accessing the internet. The charge by Company A to Company B for access services is not subject to Wisconsin sales or use tax because the services are for resale. Company B should provide Company A with a properly completed sales and use tax exemption certificate claiming resale.

- Training on how to use the internet.

2. **Does a company have to pay sales tax on software that it obtains over the internet?**

In order to establish the tax treatment of the software license for prewritten computer software, a determination must be made whether the transaction is a lease of the software or a nontaxable data processing service.

a. *Software Lease*

The sale, lease, or license of prewritten computer software in Wisconsin is subject to Wisconsin sales or use tax unless an exemption applies, regardless of how it is delivered to the customer (e.g., CD vs. electronically), unless an exemption applies. For the sale, license, lease, or rental of computer software to be subject to Wisconsin sales or use tax, the prewritten computer software must be situated in Wisconsin when used by the customer. If the software at all times is located on the server outside Wisconsin (that is, it is not downloaded or in some other way transferred to the customer's computer but, instead, the customer uses the software at the physical location of the server outside Wisconsin), a Wisconsin tax will not apply.

Note: If, instead of a license of tangible personal property the transaction is a data processing service, the transaction is not taxable. (See Part B, Data Processing Services, below, for tax treatment.)

Example: A software provider is located in New York and the user is a Wisconsin business. The user is billed by the software provider for use of software located in New York. The software is not downloaded or transferred in any way to the user in Wisconsin. The gross receipts from licensing to the Wisconsin business the software on the New York server are not subject to Wisconsin sales or use tax.

b. *Data Processing Services*

A company may provide services which permit persons at different locations to access the same prewritten computer software through remote access by telephone lines, microwave, or other means. Such services are not subject to Wisconsin sales or use tax when (1) the persons or the persons' employees who have access to the prewritten computer software are not located on the premises where the equipment/software is located and do not operate the equipment or control its operation, and (2) prewritten computer software that is downloaded or physically transferred to the customer or the customer's computers is incidental to the data processing services (that is, used solely to allow access to the service provider's hardware and software).

Note: The vendor may load the prewritten computer software onto its server and maintain the software if there is a breakdown. Such loading and maintenance, by itself, does not demonstrate sufficient evidence of control over the software to conclude that the vendor is providing a data processing service. If a customer has control over computer hardware and software it accesses from a remote location, has unlimited access to the server, loads its own software, is responsible for security measures regarding its use of the computer equipment (file server) and software, and decides how, when, and where its output will be provided through its own manipulation of the software, the vendor is leasing (licensing) tangible personal property (software) to its customer (see Part A, *Software Lease*, above, for tax treatment).

Example: Company A, an Application Service Provider (ASP), provides access to its software. The software is stored on Company A's servers and the customer accesses the software via the internet. Customers that contract with Company A have access to Company A's servers, but do not operate or have control over the servers. Company A has control over the computer hardware and software, loads the software onto the server, and is responsible for security measures regarding the computer equipment (file server) and software.

In order for Company A's customers to access the hardware and software, the customers must use a client utility program that they download from Company A.

Company A is providing a data processing service, which is not subject to Wisconsin sales and use tax, regardless of whether the server is located in Wisconsin or outside Wisconsin. Data processing services are not among the services subject to Wisconsin sales and use tax.

3. **What happens October 1, 2009**

On October 1, 2009, the "Main Street Equity Act," as enacted in 2009 Wis. Act 2 and modified by 2009 Wis. Act 28, takes effect. The Main Street Equity Act provides legislation that conforms Wisconsin's sales and use tax laws to the Streamlined Sales and Use Tax Agreement (SSUTA). The Main Street Equity Act provides new rules for sourcing sales of tangible personal property and taxable services, and also provides new rules relating to "bundled transactions." ***As a result of these and other changes provided for in the Main Street Equity Act, the answers provided above cannot be relied upon for sales occurring after September 30, 2009.*** For transactions occurring October 1, 2009 and later, refer to Sales and Use Tax Treatment Computer - Hardware, Software, Services For Sales Occurring on October 1, 2009 and Thereafter.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 20, 2020: Section 77.51, Wis. Stats. (2009-2010).

Laws enacted and in effect after February 20, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 20, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2) (a), Wis. Stats.

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