

# Summary of Responses to the Computer Software and Related Services Survey

March 24, 2005

Twenty-seven states and the District of Columbia responded to the Computer and Related Services survey: **Alabama, Arizona, Arkansas, District of Columbia, Georgia, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming**

## Software delivered in tangible form

Section 312 currently allows the use of the MPU for purchases of “computer software delivered electronically,” but is silent on software delivered in tangible form.

Are you in favor of amending the rules to allow use of the MPU for all computer software regardless of the form in which the software is delivered?

**Yes - 16 states**

**No - 12 states**

## Sourcing computer software and related services

1. How do you interpret the current rules in Section 312, when the seller is aware that a service or software will be concurrently available for use in more than one jurisdiction, but the purchaser does not provide an MPU? Does it mean that:
  - A. **the seller must source the sale according to the rules in 310(A), thus sourcing the sale to a single location - 28 states**
  - B. the seller is not obligated to collect any sales tax since the purchaser was obligated to provide an MPU \_\_\_\_\_
  - C. Other, please explain
2. Are you in favor of modifying Section 312 to allow sellers the option to collect sales tax based on information provided by the purchaser when the purchaser does not provide an MPU?

**Yes – 6 states**

**No – 22 states**

3. If you answered yes to #2 above, and the seller chooses not to collect sales tax based on the information provided by the purchaser, do you think that the seller is obligated to source under Section 310(A)?

**Yes – 6 states**

**No**

4. Are you in favor of modifying Section 312 to require sellers to collect sales tax based on information provided by the purchaser? (This would be consistent with the rules for Direct Mail Sourcing in Section 313.)

**Yes – 15 states**

**No – 13 states**

### Software Maintenance Contracts (See SOFTEC paper for details)

The paper dealing with software maintenance contracts proposes definitions and a standard that states would use to determine the taxable and non-taxable portion of software maintenance contracts for states that do not tax the entire contract price. The following questions will help to provide feedback to industry on their proposal.

Please complete the chart below to indicate (y/n) whether your state imposes tax on custom and prewritten software and upgrades to that software. For help services and either mandatory or optional computer maintenance contracts indicate (y/n) whether your state imposes tax on those items when sold to support custom computer software or prewritten computer software.

<b>Product</b>	<b>Custom</b>	<b>Prewritten</b>
Software	<b>Yes-AR<sup>(1)</sup>, DC, NJ<sup>(2)</sup>, OH<sup>(3)</sup>, SD, TX, TN</b>  <b>No - 21 states</b>	<b>Yes –All states: AR<sup>(1)</sup>, OH<sup>(3)</sup>, VA<sup>(6)</sup></b>  <b>N -</b>
Software upgrades (sold separately)	<b>Yes- AR<sup>(1)</sup>, DC, NJ<sup>(2)</sup>, OH<sup>(3)</sup>, SD, TX<sup>(4)</sup></b>  <b>No- 22 states TN<sup>(5)</sup></b>	<b>Yes- 28 states; AR<sup>(1)</sup>, OH<sup>(3)</sup>, VA<sup>(6)</sup>, TX<sup>(4)</sup></b>  <b>No- TN<sup>(5)</sup></b>
Help and training services (sold separately)	<b>Yes- OH<sup>(3)</sup>, SD, TX<sup>(4)</sup>, TN</b>  <b>No- 24 states</b>	<b>Yes-OH<sup>(3)</sup>, SD, TX<sup>(4)</sup>, TN, UT</b>  <b>No- 23 states; AR<sup>(1)</sup>, WI<sup>(7)</sup></b>
Mandatory computer maintenance contract (upgrades and help provided as a single charge)	<b>Yes- AR<sup>(1)</sup>, DC, NJ<sup>(2)</sup>, OH<sup>(3)</sup>, SD, TX, TN</b>  <b>No- 21 states</b>	<b>Yes-26 states; AR<sup>(1)</sup>, OH<sup>(3)</sup>, VA<sup>(6)</sup>, WI<sup>(7)</sup></b>  <b>No-GA, WY</b>
Optional computer maintenance contract (upgrades and help provided as a single charge)	<b>Yes- AR<sup>(1)</sup>, DC, NJ<sup>(2)</sup>, OH<sup>(3)</sup>, SD, TX, TN</b>  <b>No- 21 states</b>	<b>Yes-24 states; AR<sup>(1)</sup>, OH<sup>(3)</sup>, VA<sup>(6)</sup>, WI<sup>(7)</sup></b>  <b>No- GA, KY, NC, WY</b>

**(1) Arkansas** – software is taxable if tangible; mandatory maintenance contracts are taxable if not separately stated and upgrades are taxable if tangible and separately stated; optional maintenance contracts are taxable if upgrades are tangible.

**(2) New Jersey** - it is difficult to know how to answer the "Custom" issue, without a definition of custom. Since the 2003 repeal of New Jersey's software regulation, New Jersey views the term "custom" to only refer to software written from scratch for a particular customer. However, under the repealed regulation, we used to treat any software that was modified for a particular user as "custom." Basically, the entire product was deemed to be "intangible" or custom, and no tax was due.

Most software is now considered "modified," which is a prewritten platform or module that is modified for a particular customer's needs. Since 1/1/04, the underlying platform or module is treated as the sale of tangible personal property, which is taxable, and any modification services must be separately stated to be entitled to the professional services exemption. Since the platform or module is taxable, any upgrades or enhancements relate back to it, NOT to the modifications. If "custom" is defined as under our old rule, the responses for the upgrades and maintenance contracts would be no (not taxable); if it is defined as we currently view it, the responses would be yes (taxable) because the upgrades relate back to the pre-written module.

**(3) Ohio** – programming as a computer service is taxable when it relates to system, as opposed to application, software; training of computer operators or programmers in the operation of system software is a taxable computer service; help provided as a separately charged item, without upgrades, is not taxable.

**(4) Texas** – Mere modification of software by a third-party who did not sell the software is not taxable; help and training services - taxable for technical support by seller of software, not taxable for training.

**(5) Tennessee** believes the above questions are not clear. Help and training services that are sold with custom or prewritten software may be services that are a part of the sales price of the computer software unless they are optional and the customer may decline the purchase of the services. Prior to Streamlined legislation changes, Tennessee imposes tax on the sale of maintenance contracts as a taxable service. After Streamlined, Tennessee will impose tax on the sale or use of computer software as a separately taxable product. Tennessee will not tax maintenance contracts as either TPP or service under the Streamlined legislation.

**(6) Virginia** – prewritten computer software is subject to tax only if delivered in tangible form; Virginia imposes sales tax on 50% of the value of a maintenance contract when the contract requires the provision of both parts and labor. If the maintenance contract is for labor (services) only, no tax would apply.

**(7) Wisconsin** – help and training services for prewritten software are not taxable if it involves just answering questions, hands on help is taxable; maintenance contracts for prewritten software are taxable unless the seller provides an allocation for nontaxable help.

1. Does your state use an apportionment factor to impose tax on software maintenance contracts (such as MN's 80/20 rule described in the SOFTEC paper)?

**Yes – 4 states:**

- Iowa uses a 50/50 rule
- Minnesota uses 80/20 rule
- Virginia uses a 50/50 rule
- Wisconsin uses a reasonable percentage provided by seller

2. If your state taxes “mandatory computer maintenance contracts,” is that because your state considers the cost of the contract to be part of the sales price of taxable goods?

**Yes – 21 states**

**No – 7 states:**

- Arkansas taxes if upgrades are in tangible form
- District of Columbia
- Georgia exempts maintenance contracts for software
- Kansas statute specifically taxes software maintenance services
- New York taxes upgrades as software when charged separately
- Pennsylvania – taxed if it includes canned upgrades
- Texas taxes the maintenance as a taxable service unless service provider did not sell or license the software

3. Is the sale of a software maintenance contract that provides both upgrades and help and training services for a single price a bundled transaction? *(See the Bundled Transaction paper attached. This would only be a concern for states that do not tax both the software upgrades and the help services. Industry believes that the service contracts are not within the definition of bundled transactions since the industry does not typically sell rights to the additional software separate and apart from the rights to the services. They distinguish these contracts as a “single product with multiple components” rather than the sale of two separate and distinct products.)*

**Yes – 20 states**

**No – 7 states**

**No response – 1 state**