

STREAMLINED SALES AND USE TAX AGREEMENT
COMPLIANCE REVIEW AND INTERPRETATIONS COMMITTEE

Interpretative Opinion 2009-01

This Interpretative Opinion recommendation is made to the Governing Board by the Compliance Review and Interpretations Committee this day of January 15, 2009 in accordance with Article IX, Rule 902 of the Rules and Procedures adopted by the Streamlined Sales Tax Governing Board, Inc.

The party requesting the interpretation is Software Finance & Tax Executives Council (SoFTEC) represented by Mark Nebergall. The request was made on January 11, 2008.

Issue

SoFTEC raises an issue associated with the purchase of additional software licenses. The fact pattern presented involves a purchaser acquiring prewritten computer software under a license that limits its ability to use the software in one of three ways: (1) the license only permits the purchaser to make a set number of copies, (2) the license only permits a set number of users to use the software concurrently, or (3) the license only permits the purchaser to load the software onto a computer with a specified computing power. If the purchaser wants to make additional copies of the software, allow additional users to use the software concurrently, or to migrate the software to more powerful computer, it must upgrade the license and pay an additional license fee. Once the fee is paid, the seller provides the purchaser by telephone with an alphanumeric code which, when entered into the computer, permits the making of additional copies of the software, permits additional concurrent users, or causes the software to function on the more powerful machine. The seller delivers no additional software to the purchaser. The issue presented is whether a software license upgrade (as opposed to an upgrade of the software itself) constitute “tangible personal property” or “computer software” where the only thing delivered to the purchaser is an alphanumeric code. The requester proposes that an interpretation be made that a software license upgrade (as opposed to an upgrade of the software itself) does not constitute “tangible personal property” or “computer software” where the only thing delivered to the purchaser is an alphanumeric code.

Public Comment

No state or public written comments were received.

Recommendation

By a unanimous vote, the Compliance Review and Interpretations Committee submits to the Governing Board a recommendation that the interpretation proposed by the requester not be accepted.

Rationale

The Agreement defines “**Tangible personal property**” as “personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses” and “includes electricity, water, gas, steam, and prewritten computer software.” Although no physical software or other tangible personal property is distributed in the fact pattern, the additional license to use the software is the essence of the transaction, not the alphanumeric code. The alphanumeric code merely facilitates the additional use of the software. The additional license to use the software should be treated the same as the original purchase of the software license.

Participating Committee Members

Larry Wilkie, Myles Vosberg, Andy Sabol, Tony Mastin, Joe Van Devender.