

A motion by Kansas, Kentucky, North Carolina, South Dakota, and Tennessee to amend Governing Board rules relating to software maintenance contracts:

Rule 327.5. Computer Software Maintenance Contracts

The following related terms are defined in Part II of the Library of Definitions: computer software maintenance contracts, mandatory computer software maintenance contracts, optional computer software maintenance contracts, and prewritten computer software. In addition, Section 330 contains provisions addressing the treatment of bundled optional computer software maintenance contracts with respect to prewritten computer software. Compliance with Section 330D.3 requires the member state to select a uniform method of treatment for bundled optional computer software maintenance contracts when a state otherwise does not specifically impose tax on the sale of computer software maintenance contracts. Below are additional guidelines for the treatment of computer software maintenance contracts.

- (1) If the sales prices for a mandatory computer software maintenance contract and prewritten computer software are not separately itemized on the invoice or similar billing document, the price for the maintenance contract is treated as part of the sales price for the prewritten computer software.
- (2) If the sales prices for the customer support services and the upgrades and updates components of an optional prewritten computer software maintenance contract are separately itemized on the invoice or similar billing document, the price for the maintenance contract is characterized as follows:
 - a. The amount stated on the invoice or similar billing document for support services shall be characterized as a sale of services; and
 - b. The amount stated on the invoice or similar billing document as the amount for updates and upgrades shall be characterized as the sale of prewritten software.
- (3) Renewal of a computer software maintenance contract where the customer is obligated to purchase the renewal as a condition to the continued use of prewritten computer software is a mandatory computer software maintenance contract. All other renewals of computer software maintenance contracts are optional computer software maintenance contracts.
- (4) Mandatory and optional computer software maintenance contracts relating to non-prewritten computer software are characterized the same as non-prewritten computer software.
- (5) Computer software maintenance provided by someone other than the vendor of the software that does not obligate the maintenance vendor to provide software updates or upgrades is characterized as a sale of services. Each state may select an appropriate percentage for allocating between taxable and nontaxable or exempt products under Section 330D.3(d).

Each member state shall indicate within its Taxability Matrix the adoption of software maintenance contract definitions and whether there has been a selection for uniform taxable and nontaxable or exempt percentages pursuant to Section 330D.3.

Rule 330.3 Allocations with respect to Prewritten Computer Software Maintenance Contracts:

Each state may select one uniform percentage within the range allowed under Section 330D.3(d) for allocating between taxable and nontaxable or exempt products.

Rule 309.4. Sourcing ~~Software Post-Sale Support Agreements that Combine Both Prewritten Computer Software and Services (Software Post-Sale Support Agreements)~~ Computer Software Maintenance Contracts.

- (1) The initial retail sale of a ~~software post-sale support agreement~~ computer software maintenance contract sold by the seller of the software is sourced to the same address(es) as the retail sale of the underlying software.
- (2) a. The retail sale of a ~~software post-sale support agreement~~ computer software maintenance contract sold after the retail sale of the underlying software, the renewal of a ~~software post-sale support agreement~~ computer software maintenance contract, or the retail sale of a ~~software post-sale support agreement~~ computer software maintenance contract by a seller other than the seller of the software is treated separately from the retail sale of the underlying software and shall be sourced in accordance with Section 310(A) of the SSUTA.
 - b. Where Section 310(A)(1) and (2) of the SSUTA do not apply, sourcing a retail sale of a renewal of a ~~software post-sale support agreement~~ computer software maintenance contract to an address where the purchaser received the underlying software will not constitute bad faith so long as the seller has not received information from the purchaser indicating a change in the location of the underlying software.