

March 31, 2017
Pennsylvania Sales and Use Tax
SUT-17-001

Act 84 of 2016—Digital Goods and Support Services to Canned Computer Software

Effective October 30, 2017, Act No. 43 of October 30, 2017 (P.L. 672), amended Section 201(m) of the TRC and removed from the definition of “tangible personal property” separately invoiced help desk or call center support.

ISSUE:

To what extent are support services to canned computer software and other digital property subject to Pennsylvania Sales and Use Tax?

CONCLUSION:

All support services, as defined below, to canned computer software and other digital property are subject to Pennsylvania Sales and Use Tax.

DISCUSSION:

Pennsylvania law imposes a six percent tax upon the purchase price of each separate sale at retail or use of tangible personal property and certain selected services within this Commonwealth. 72 P.S. § 7202. A sale at retail is defined as including “[a]ny transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether such transfer be absolute or conditional and by whatsoever means the same shall have been effected.” 72 P.S. § 7201(k)(1). A sale at retail also specifically includes “the rendition for a consideration of the service of...altering...tangible personal property.” 72 P.S. § 7201(k)(4). As recognized in your letter, canned computer software has long been considered to constitute tangible personal property. *See, e.g.,* 72 P.S. § 7201(m); *Dechert, LLP vs. Commonwealth*, 998 A.2d 575 (Pa. 2010) and *Graham Packaging vs. Commonwealth*, 882 A.2d 1076 (Pa. Cmwlth. 2005); 61 Pa. Code § 60.19.

Act 84 of 2016 updated the statutory definition of “tangible personal property” to expressly include certain specified items including video, books, applications, games, music, audio, canned software, and other specified items. *See* Act 84 of 2016 (codified at 72 P.S. § 7201(m)(2) (*effective* August 1, 2016)). The Department’s statement of policy on computer software, hardware and related transactions, adopted on January 7, 2000, does not address all aspects of tangible personal property as that term is now defined under Act 84 of 2016. *See* 61 Pa. Code § 60.19 (*adopted in* 30 Pa.B. 233 (*effective* January 8, 2000)). To the extent the amended statute and the statement of policy at 61 Pa. Code § 60.19 are inconsistent, the provisions of the amended statute apply.

Act 84 also specifically included in the definition of “tangible personal property” the “maintenance, updates and support” of the newly defined electronic or digital tangible personal

property. Specifically, you requested the Department's interpretation of what is encompassed by the term "support."

The Department considers "support" to mean the providing of advice or guidance concerning otherwise taxable digital or electronic tangible personal property involving identifying the source of problems affecting the usability of the property and attempting to place the property in or restore the property to a useable state, including, but not limited to what is commonly referred to as help desk support or call center support. The support may be delivered verbally or online, or through automated means that may reside on a customer's device or by human means. The support may be delivered by the property vendor or a third party support provider who may or may not have remote access to the customer's device. Providing support is taxable regardless of the method of billing. Examples include, but are not limited to, the following:

- A vendor provides support via a remote desktop where they access and alter the software directly.
- A vendor provides telephone support where they troubleshoot/discuss the issue with the customer and subsequently provide a patch or module to fix the issue.
- A customer sends a copy of the software program to a vendor who accesses, uses or alters and then returns the useable version of the software.
- A vendor provides telephone support in the form of a call-in, help-desk providing direction as to the use, correction, or manipulation of the software.

As to your specific questions, the following guidance can be applied:

(1) How is "support" defined?

Please reference the definition of Support above.

(2) Does "support" encompass all types of technical support for canned computer software?

Yes, if the technical support falls within the above definition of "support" above.

(3) Does "support" include "consulting"?

No, unless activities described as "consulting" falls within the above definition of "support". However, as this letter deals only with "support" and the term "consulting" may be used to describe various activities, this letter may not be interpreted as a definitive determination of the taxability of what taxpayers may describe as "consulting."

(4) Does "support" include "training"?

No, the above definition of "support" does not include training.

(5) Is "support" of canned computer software which is sold via tangible media also taxable?

Yes, the medium of transfer of the canned computer software or support is not relevant as to a determination of taxability.