



Sales and Use Tax - Computer Software. CHARGES FOR PERSONAL SERVICES THAT RESULT IN THE PROVIDING OR PRODUCTION OF COMPUTER SOFTWARE ARE TAXABLE UNLESS CERTAIN CONDITIONS ARE MET.

Advice has been requested as to whether charges for the personal services of computer programmers and consultants that result in computer software are subject to the sales and use tax.

The Nebraska Revenue Act of 1967 in §77-2702.07(3) imposes a sales tax on the furnishing of certain intangibles, including computer software. The imposition of the tax on computer software include all sales, licenses, or other charges for computer software. Reg-1-088.01A states “The gross receipts from furnishing software includes services provided by a consultant that result in a transfer of software from the consultant to the client.” (emphasis added) This includes charges for coding, punching, or otherwise producing computer software without the transfer of any tangible personal property. However, the Nebraska Revenue Act of 1967 does not impose a sales or use tax on the labor or services provided by a person that are part of the production or producing of a taxable item for their own use. For a business entity, the tax is not imposed on the production of items by employees for use by the employer.

Therefore, any charges for personal services that result in software are subject to tax unless it can be shown that the payments are wages of an employee, whether temporary or permanent, who writes computer software.

The distinction between purchasing software and hiring temporary employees has been confused by common business practices in the software industry. A trend in the software industry, especially for larger, more complex software programs, is for a company to pay for the computer software based on time and materials rather than a fixed amount. Since this method is often used for paying for temporary employees, the billing method does not distinguish between taxable sales of computer software and nontaxable temporary employee services.

Since the billing method or the invoice cannot be used to determine if the transaction is taxable, the purpose of this ruling is to provide guidance on other factors that can be used to distinguish between a purchase of software which is taxable and the use of a temporary employee which is not taxable.

When a company receives personal services, including those of a temporary employee, that result in the providing or producing of computer software, the charges are subject to the Nebraska sales and use tax unless the company and the temporary service provider have an agreement as set forth below.

If the written agreement between the company and the provider contains all of the following provisions, the company will be considered to be receiving the services of a temporary employee, and the amount paid to the provider will not be subject to the sales and use tax as a sale of software.

1. The transaction is only to obtain services of a competent, temporary employee who will be under the control of the company as to the manner of performance and the working conditions.

2. Neither the provider nor the temporary employee has any liability for the failure of the software to perform.
3. Any software produced belongs to the company, and it has full rights and control regarding future use of any and all copies of the software.

If all of these provisions are not expressly included in the written agreement, then the charges for the personal services are for providing computer software and the gross receipts are subject to sales and use tax.

APPROVED:

A handwritten signature in black ink, appearing to read 'MJE', with a long horizontal flourish extending to the right.

Mary Jane Egr
State Tax Commissioner

February 11, 2002