STATEMENTS OF POLICY

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 60]

Computer Software, Hardware and Related Transactions

The Department of Revenue (Department) has adopted a statement of policy under the authority contained in § 3.2 (relating to statements of policy). This statement of policy adds § 60.19 (relating to computer software, hardware and related transactions) and takes effect immediately upon publication in the *Pennsylvania Bulletin.*

Under the act of May 7, 1997 (P. L. 85, No. 7), various types of computer services are no longer subject to Sales and Use Tax on or after July 1, 1997. However, certain computer software and hardware transactions remain subject to tax. The purpose of this statement of policy is to provide guidance concerning these transactions.

Subsection (a) explains the scope of § 60.19. Subsection (b) sets forth definitions of various terms utilized in the section. The application of tax as it relates to computer hardware is addressed in subsection (c)(1). The application of tax as it relates to computer software, including canned and custom software, is addressed in subsection (c)(2). Exemptions from taxation are addressed in subsection (d).

Specific questions relating to information provided in this statement of policy may be directed to the Department of Revenue, Office of Chief Counsel, Dept. 281061, Harrisburg, PA 17128-1061.

(*Editor's Note*: The regulations of the Department, 61 Pa. Code Chapter 60, are amended by adding a statement of policy in § 60.19, to read as set forth in Annex A.)

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-393. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE II. SALES AND USE TAX

CHAPTER 60. SALES AND USE TAX PRONOUNCEMENTS—STATEMENTS OF POLICY

§ 60.19. Computer software, hardware and related transactions.

(a) *Scope.* Effective July 1, 1997, the rendition of computer programming, computer integrated systems design, computer processing, data preparation or processing, information retrieval, computer facilities management and other computer-related services, as defined under repealed section 201(dd)—(ii) of the TRC (72 P. S. § 7201(dd)—(ii)), are no longer subject to Sales or Use Tax. The sale at retail or use of computer hardware and canned software, as well as services thereto, remains subject to Sales and Use Tax as the sale at retail or use of tangible personal property and is not affected by the repeal of section 201(dd)—(ii) of the TRC.

(b) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Canned software—Computer software that does not qualify as custom software.

Computer hardware—Assembly of physical equipment that is united and regulated by interaction or interdependence to accomplish a set of specific computer system functions.

(i) The term includes any connected equipment which enables the computer to store, retrieve or communicate to or from a person, another computer or another device, the results of computer operations, computer programs or computer data.

(ii) The term also includes associated parts, which encompass any component of computer system hardware that is used in connection with and that is necessary to the performance of the hardware's operation.

(iii) Examples of computer hardware are: microcomputers; minicomputers; main-frame computers; personal computers; external hard drives; portable disk drives; memory chip; compact disc read only memory (CD-ROM) drives; external modems; printers; scanners; servers; monitors; keyboards; mouses; microphone; network interfaces; network hubs; network routers; motherboards; daughterboards; central processing units; controller cards; internal hard drives; digitizer; internal modems; network interface cards; sound cards; video cards; and network wiring and cables.

Custom software—Computer software designed, created and developed for and to the specifications of an original purchaser.

Original purchaser—The first person for whom the custom software was designed, created and developed, and to whom it was transferred in a sale at retail.

Storage media—The term includes hard disks, compact disks, floppy disks, magnetic tape, cards and other tangible medium used for the storage of computer readable information.

(c) *Application.*

(1) *Computer hardware.*

(i) The sale at retail or use of computer hardware is subject to tax.

(ii) The sale at retail or use of the services of repairing, altering or cleaning computer hardware is subject to tax.

(iii) The sale at retail or use of maintenance, service and warranty contracts for computer hardware constitutes prepayment for services to tangible personal property and is subject to tax.

(2) *Computer software.*

(i) *Canned software.* The sale at retail or use of canned software, including updates, enhancements and upgrades is subject to tax.

(A) Canned software includes custom software that is transferred pursuant to a sale at retail to a person other than the original purchaser.

(B) Computer software designed, created and developed to adapt or modify canned software to the specific needs of a particular customer does not convert the canned software to custom software. Any charge for the custom

software or modifications shall be reasonable and be separately stated on the sales invoice or statement to the customer to be exempt from tax.

(C) A vendor's transfer for consideration to a purchaser of the temporary ownership, possession or custody of a storage medium containing canned software for the purpose of being used or recorded by either the purchaser or vendor on the purchaser's computer hardware is subject to tax.

(D) The sale at retail or use of a canned software maintenance contract constitutes a prepayment for services to tangible personal property and is subject to tax. If a canned software maintenance agreement provides that the purchaser is entitled to receive both taxable components, such as canned software updates, enhancements, upgrades or error corrections, and nontaxable components, such as consultation, support or training services, the charge for the nontaxable component is not subject to tax if that charge is separately stated on the sales invoice.

(ii) *Custom software.* The sale at retail or use of custom software is not subject to tax. The sale at retail or use of custom software constitutes a purchase of a nontaxable computer programming service.

(A) The sale at retail or use of multiple copies or licenses of custom software to the original purchaser is not subject to tax.

(B) The sale at retail or use of custom software installation, custom software repair and maintenance, custom software updates, enhancements and upgrades that constitute custom software is not subject to tax.

(C) A custom software vendor's purchase of storage media used to transfer custom software to its customers, and the vendor's purchase of any related materials, including documentation and training manuals that are transferred to the customer as part of the sale at retail of custom software, are subject to tax when purchased by the custom software vendor.

(d) *Exemptions from tax.*

(1) The sale at retail or use of canned software and computer hardware is exempt if purchased by qualified charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, unless the software is used in an unrelated trade or business; by the Federal government; or by the Commonwealth, its instrumentalities or political subdivisions, including public school districts.

(2) The manufacturing, research, mining, processing, public utility, farming, dairying, agriculture, horticulture or floriculture exemptions from tax apply to the purchase of canned computer software and computer hardware predominantly and directly used in these operations.

(3) Under section 201(c)(5) of the TRC, the manufacturing and research exemption from tax applies to the sale at retail or use of tangible personal property or taxable services by a person engaged in the business of manufacturing or researching canned software, if the property is predominately and directly used by the purchaser in the manufacture or research of canned software.

(i) The creation of custom software does not qualify as manufacturing or research.

(ii) When a purchaser of tangible personal property uses the property to both manufacture canned software and create custom software, the purchaser has the burden of establishing that the tangible personal property is predominately used in the manufacturing or research of canned software.

(4) The sale at retail of canned software and computer hardware to a vendor who will transfer ownership, custody or possession of the canned software or computer hardware for a consideration in the ordinary course of its business is exempt from tax as a sale for resale. Canned software or computer hardware used by a vendor in producing a separate computer product for resale or in providing a service does not qualify as a sale for resale.

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