



Computer Hardware and Software

COMPUTER HARDWARE

The sale, lease, or rental of computer hardware, including central processing units and all peripheral equipment, parts, and supplies, is subject to City of Loveland sales tax.

Non-taxable sales include charges for labor or services rendered in installing or applying computer hardware.

COMPUTER SOFTWARE

“Computer program” means a series of instructions sold as a completed program which are coded for acceptance or use by a computer system and which are designed to permit the computer system to process data and provide results and information. The series of instructions may be contained in or on magnetic tapes, semiconductor chips, punched cards, printed instructions, or other tangible or electronic media. This definition includes computer game cartridges that allow certain games to be played on a television set through interaction with a computer or on home computers. The combining of several existing program modules into a new program will be considered the sale of a completed program.

A software program is one in which instructions and routines (programs) are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his EDP system.

SALES TAX ON COMPUTER SOFTWARE ON OR AFTER JULY 1, 2012

Computer software will be subject to sales tax if it meets all of the following criteria:

- The software is pre-packaged for repeated sale or license;
- The use of the software is governed by a tear-open non-negotiable license agreement;
- The software is delivered to the customer in a tangible medium. Software is not delivered to the customer in a tangible medium if it is provided through an application service provider, delivered by electronic software delivery, or transferred by load and leave software delivery.

SOFTWARE LICENSES

Multiple Points of Use

In the event a vendor sells software to a Loveland purchaser that is taxable under this regulation, and the Loveland purchaser pays the vendor for a quantity of software licenses with the intent to distribute the software to any of the purchaser's locations outside of Loveland, the measure of Loveland sales tax due is the total of the license fees associated only with the licenses that are actually used in Loveland. The Loveland purchaser shall provide a written statement to the vendor, attesting to the amount of the license fees associated with Loveland and with points outside of Loveland. This written statement shall relieve the vendor of any liability associated with the proration.

SOFTWARE MAINTENANCE AGREEMENTS

Software programs are sometimes sold, or are licensed for use, with an additional fee, generally called a maintenance agreement.

Mandatory maintenance agreements. Charges for maintenance agreements that the retailer requires buyers to purchase as part of their purchase of taxable computer software are subject to sales tax, regardless of whether the charge for the maintenance agreement is separately stated on the customer's invoice or maintenance contract.

Optional maintenance agreements. Charges for maintenance agreements that the buyer has the option to purchase as part of a purchase of taxable computer software are not subject to tax if the maintenance charges are separately stated on the customer's invoice. If the maintenance charges are not separately stated, then the total price for both the taxable computer software and maintenance agreement is subject to sales tax. If a customer receives upgrades to taxable computer software pursuant to an optional maintenance agreement and the upgrade is delivered by a tangible medium, such as a CD or flash drive, then the entire charge for the maintenance agreement is subject to sales tax, unless the charge for the upgrade is separately stated in the maintenance contract or customer's invoice.

DEFINITIONS

Application Service Provider: An application service provider or "ASP" is an entity that retains custody over (or "hosts") software for use by third parties. Users of the software hosted by an ASP typically will access the software via the Internet. The ASP may or may not own or license the software, but generally will own and maintain hardware and networking equipment required for the user to access the software. The ASP may charge the user a license fee for the software (in instances where the ASP owns the software) and/or a fee for maintaining the software/hardware used by its customer.

Computer Software: A set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

Electronic Software Delivery: Software transferred by remote telecommunications to the purchaser's computer, where the purchaser does not obtain possession of any tangible medium in the transaction.

"Load and Leave" Software Delivery: Delivery of software to the purchaser by use of tangible medium where the title to or possession of the tangible medium is not transferred to the purchaser, and where the software is manually loaded by the vendor, or the vendor's representative, at the purchaser's location.

Pre-packaged for repeated sale or license: Software that is pre-packaged for repeated sale or license in the same form to multiple users without modification, and is typically sold in a shrink-wrapped box.

Tangible medium: Tapes, disks, CDs, cards, and comparable physical medium.

Tear-open non-negotiable license agreement: A license agreement contained on or in the package, which by its terms becomes effective upon opening of the package and accepting the licensing agreement. This term does not include a written license agreement or contract signed by the licensor and the licensee.

The internalized instruction code which controls the basic operations (e.g., arithmetic and logic) of the computer causing it to execute instructions contained in system programs is an integral part of the computer and is not normally accessible or modifiable by the user. Such internal code systems are considered part of the hardware and are taxable. The fact that the vendor does or does not charge separately for it is immaterial.

THE ABOVE INFORMATION IS A SUMMARY IN LAYMAN'S TERMS OF THE RELEVANT LOVELAND TAX LAW FOR THIS INDUSTRY OR BUSINESS SEGMENT. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE LMTC (LOVELAND MUNICIPAL TAX CODE) AND APPLICABLE RULES AND REGULATIONS.

Civic Center 500 East Third Street STE 110, Loveland, Colorado 80537 Tel: (970)-962-2708
Fax: (970)-962-2927 **Email:** SalesTax@cityofloveland.org **Internet:** cityofloveland.org/salestax