

TO BE RESCINDED

5703-9-46

Sales and use taxes: automatic data processing and computer services.

(A) As used in this rule:

- (1) "Automatic data processing services" means:
 - (a) The processing of others' data including all processes incident to processing of data such as keypunching, keystroke verification, rearranging, or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is stored, whether these processes are done by the same person or several persons; and
 - (b) Providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment.
- (2) When provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems, "computer services" means:
 - (a) Specifying computer hardware configurations;
 - (b) Evaluating technical processing characteristics;
 - (c) Computer programming; and
 - (d) Training computer programmers and operators.
- (3) "Specifying computer hardware configurations" means the service of instructing others in the proper set-up, installation, and start-up of computer hardware.
- (4) "Evaluating technical processing characteristics" means the service of reviewing, testing, or otherwise ascertaining the operating capacity or characteristics of computer hardware or systems software. It does not include conducting feasibility studies or analysis of hardware or software needs and alternatives.
- (5) "Programming means the service of writing, changing, debugging, or installing system software. It does not include the service of writing, changing, or

debugging of application software.

- (a) Systems software includes all programming that controls the basic operations of the computer, such as arithmetic, logic, compilation or similar functions whether it is an integral part of the computer hardware or is contained on magnetic media.
 - (b) Application software includes programs that are intended to perform business functions or control or monitor processes.
- (6) "Training" means instructing computer programmers and operators in the use of computer equipment and its system software. It does not include instruction in the use of application software or other result-oriented procedures.
- (7) "Canned software" means software that is not specially created for a particular consumer. The sale or lease of, or granting a license to use, canned software is not automatic data processing and computer services, but is the sale of tangible personal property. When a vendor, in a single transaction, sells canned software that has been modified or customized for that particular consumer, the transaction will be considered the sale of tangible personal property if the charge for the modification constitutes no more than half of the price of the sale.
- (8) "Personal and professional services" means all personal services other than automatic data processing and computer services.
- (9) "Provider" means a vendor or seller who provides or supplies automatic data processing services, computer services, or personal services for a consideration, and "provision" means the sale of such services.
- (10) "Affiliated group" means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights. In the case of a partnership, a general partner that has or controls at least a fifty per cent partnership interest will be considered to control the partnership.
- (11) "Business" means the ongoing conduct of commercial, manufacturing, mining, agriculture, professional, service, or similar enterprise, whether or not the person or persons conducting such enterprise are for-profit or nonprofit including any activity engaged in by any person with the object of gain,

benefit or advantage, either direct or indirect. Business does not include the activity of an individual in managing and investing his own funds.

(B)

- (1) For purposes of Chapters 5739. and 5741. of the Revised Code, when the true object of the transaction is the receipt by the consumer of automatic data processing or computer services rather than the receipt of personal or professional services to which automatic data processing or computer services are incidental or supplemental:
 - (a) The provision of automatic data processing services or computer services in this state for a consideration for use in business by the consumer is a sale; and
 - (b) The receipt of the benefit of these services in this state for use in business constitutes a use.
- (2) When a transaction includes the provision of automatic data processing or computer services:
 - (a) The true object of the transaction is the receipt of automatic data processing or computer services if such services render a significant benefit to the consumer;
 - (b) The true object of the transaction is the receipt of personal or professional services to which the automatic data processing or computer services are merely incidental or supplemental if:
 - (i) The automatic data processing or computer services are merely utilized by the provider in the performance or delivery of such personal or professional services;
 - (ii) The benefit sought to be received by the consumer is the personal or professional service; and
 - (iii) The automatic data processing or computer services themselves provide no significant benefit to the consumer.

(3)

- (a) A transaction may include separable components such that the true object of one component is the receipt of automatic data processing or computer services and the true object of the separable component is the receipt of personal and professional services or consequential tangible personal property. A transaction separable in this manner is a "mixed transaction." The various components of a mixed transaction shall be separately stated in the contract or initial billing and the price applicable to each component shall similarly be separated. It shall be sufficient for purposes of this rule to separate categories of: all tangible personal property; all repair and installation services; all personal and professional services; and all automatic data processing and computer services. If the charges for the various components of a mixed transaction are not properly separated, for assessment purposes the commissioner may make whatever allocation of the total price as seems appropriate based on the facts or the commissioner may assess the tax on the price of the total transaction if a reasonable allocation is impossible.
- (b) Any charge for the modification of canned software, as defined in paragraph (A)(7) of this rule, is not separable under the terms of this paragraph.
- (4) The provision of computer services for consideration is a sale, regardless of whether the provider is also a vendor of computer equipment or software and regardless of whether the work is performed on or off the premises of the consumer, and whether the person performing the service acts under the immediate supervision of the provider or the consumer. Services performed by an employee for his employer are not sales.
- (5) The sale, lease, repair, or installation of computer hardware and the sale or lease of canned computer software do not constitute automatic data processing or computer services.
- (6) Sales of automatic data processing or computer services are conclusively determined to be consummated at the location of the consumer where the service is performed or received. The tax in effect at such location of the consumer is the tax that is applicable to the sale.
- (C) Every person in this state who is engaged in the business of providing automatic data processing or computer services must be licensed as a service vendor pursuant to division (C) of section 5739.17 of the Revised Code. Every person outside this state who is engaged in the business of providing automatic data processing or computer services in this state must be registered as a seller pursuant to section 5741.17 of

the Revised Code.

(D)

- (1) Automatic data processing and computer services provided between members of an affiliated group are not sales.
- (2) Computer services provided in conjunction with computer equipment or systems, the purchase of which would be exempt from sales and use tax, are not sales.
- (3) Sales of automatic data processing and computer services by this state, political subdivisions of this state, and governmental entities of this state are exempt from the tax.
- (4) The provision of credit information to users of such information by a consumer credit reporting agency, as specified in division (Y)(2)(j) of section 5739.01 of the Revised Code, is not a sale.

(E)

- (1) For purposes of sections 5739.01, 5739.011, and 5739.02 of the Revised Code and rule 5703-9-21 of the Administrative Code, the provision of automatic data processing and computer services does not constitute manufacturing.
- (2) A provider of automatic data processing and computer services may claim exception on his purchases of automatic data processing and computer services when:
 - (a) The purchased service is an integral part of the automatic data processing or computer service being provided; and
 - (b) The total cost of the purchased service will be included in the price of the service provided.

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CERTIFIED ELECTRONICALLY

Certification

04/26/2004

Date

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