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**Sales and use taxes: automatic data processing, computer services, and electronic information services.**

(A) As used in this rule:

(1) "Automatic data processing" means:

(a) Processing others' data, including all activities 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, changing the medium on which data is stored, and preparing business documents such as reports, checks, or bills, whether these activities are done by one person or several persons; or

(b) Providing access by any means to computer equipment for the purpose of processing data.

(2) "Computer services" means:

(a) Specifying computer hardware configurations, which is the service of instructing others in the proper set-up, installation, and start-up of computer hardware;

(b) Evaluating technical processing characteristics, which is 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 or alternatives;

(c) Computer programming, which is, for purposes of the definition of "computer services," the service of writing, changing, debugging, or installing systems software; or

(d) Training computer programmers and operators in the operation and use of computer equipment and its system software.

Computer services must be provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems to fall within the scope of this rule.

(3) "Electronic information services" has the same meaning as in division (Y)(1)(c) of section 5739.01 of the Revised Code. "Electronic information service" includes such services as providing Internet access, providing access to database information, and providing access to electronic mail systems.

(4) "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 disks or other storage media. "Systems software," solely for purposes of Chapter 5739. and 5741. of the Revised Code because of division (Y)(2)(e) of section 5739.01 of the Revised Code, does not include application software programs that are intended to perform business functions or control or monitor processes.

(5) "Personal and professional services" has the same meaning as in division (Y)(2) of section 5739.01 of the Revised Code.

(6) "Provider", for purposes of this rule, means a vendor or seller who provides or supplies automatic data processing, computer services, electronic information services, or personal or professional services for a consideration, and "provision" means the sale of such services.

(7) "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 entities and includes 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 the individual's own funds.

(B) For purposes of Chapter 5739. and 5741. of the Revised Code:

(1) The provision of automatic data processing services, computer services, or electronic information services in this state for a consideration for use in business by the consumer is a sale that is subject to the sales tax.

(2) The receipt of the benefit of these services in this state for use in business by the consumer constitutes a use subject to the use tax.

(3) When a transaction includes the provision of automatic data processing, computer services, or electronic information services:

(a) The true object of the transaction is the receipt of automatic data processing, computer services, or electronic information 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, computer services, or electronic information services are merely incidental or supplemental if:

(i) The automatic data processing, computer services, or electronic information 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; or

(iii) The automatic data processing, computer services, or electronic information services themselves provide no significant benefit to the consumer.

(4) A transaction may include separable components such that the true object of one or more separately stated components is the receipt of automatic data processing, computer services, or electronic information services and the true object of any other separately stated components is the receipt of personal and professional services or consequential tangible personal property or other taxable services. 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 components to the extent they are separate categories under section 5739.01(B) of the Revised Code. Such categories include, but are not limited to, all tangible personal property; all repair and installation services; all personal and professional services; and all automatic data processing, computer services, and electronic information services.

(5) 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 the employer are not sales.

(C) Every person in this state who is making sales of automatic data processing, computer services, or electronic information services for use in business must be licensed pursuant to section 5739.17 of the Revised Code. Every person outside this state who is providing automatic data processing, computer services, or electronic information services in this state, and who has substantial nexus with this state as provided in division (H) of section 5741.01 of the Revised Code must be registered as a seller pursuant to section 5741.17 of the Revised Code.

(D) For purposes of Chapter 5739. and 5741. of the Revised Code, the provision of automatic data processing, computer services, or electronic information services does not constitute manufacturing.

(E) A provider of automatic data processing, computer services, or electronic information services may claim exemption on purchases of automatic data processing, computer services, or electronic information services when both the following are met:

(1) The purchased service is an integral part of the automatic data processing, computer service, or electronic information services being provided; and

(2) The total cost of the purchased service will be included in the price of the service provided.

(F) A provider of automatic data processing, computer services, or electronic information services may claim resale on any purchase of tangible personal property that is or is to be transferred permanently to the consumer of the service as an integral part of the performance of the service.

Effective:

R.C. 119.032 review dates: Exempt

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Certification

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Date

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