

5703-9-59

Sales and Use Tax, Transactions Involving Optional Computer Software Maintenance Contracts.

(A) As used in this rule:

- (1) "Computer software maintenance contract" means a contract that obligates a vendor or seller of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.
- (2) "Mandatory computer software maintenance contract" means a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.
- (3) "Optional computer software maintenance contract" is a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

(B) A charge for a mandatory computer software maintenance contract is considered to be part of the sales price of the computer software to which it relates.

(C) In any case where an optional computer software maintenance contract for prewritten computer software is sold to an Ohio consumer by a vendor or seller, the following treatment shall apply.

- (1) If the optional computer software maintenance contract only obligates the vendor or seller to provide upgrades and updates, the contract will be deemed to be a sale of prewritten computer software, which is defined to be tangible personal property by division (YY) of R.C. 5739.01. Such a sale will be considered taxable unless the consumer has a claim of exemption.
- (2) If the optional computer software maintenance contract only obligates the vendor or seller to provide support services, and no upgrades or updates, the transaction will be considered to be the sale of a non-taxable personal or professional service.
- (3) If the optional computer software maintenance contract includes both upgrades or updates and support services that are not itemized separately on the invoice or similar billing document, the contract shall be characterized as a sale of prewritten computer software, which is defined to be tangible personal property by division (YY) of R.C. 5739.01. Such a sale will be considered taxable unless the consumer has a claim of exemption.

Effective:

R.C. 119.032 review dates: Exempt

Certification

Date

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