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SOFTWARE

This tax guide is prepared and published for the information of the general public and all persons in business pursuits who would be required to make payment of Sales Tax or Use Tax under provisions of Chapter 25, Article III of the Code of the City of Fort Collins (the "Tax Code"), as well as for the guidance of the City employees whose responsibility it is to collect the taxes imposed by the Tax Code and the enforcement thereof.

The following guide is exactly as it says, **a GUIDE**, and not to be relied upon as an official interpretation of the Tax Code applicable in all circumstances. Instead, specific reference should be made to the Tax Code and related ordinances for what is required in any particular circumstance. Please contact us at salestax@fcgov.com, or at 970-221-6780, with questions.

SOFTWARE

"Software program" means a sequence of instructions that can be measured, interpreted, and executed by an electronic device regardless of the means by which it is accessed, or the medium of conveyance. The generic terms of software, software application, software as a service, updates, upgrades, patches, user exits, and any items that add or extend functionality to existing software programs shall be considered a "software program."

The software may be in the form of:

- 1) Systems programs – programs that control the hardware itself and allow it to compile, assemble, and process application programs.
- 2) Application programs – programs that are created to perform business functions, or control, or monitor processes.
- 3) Pre-written programs (canned) programs that are either systems programs or application programs and are not written specifically for the user.
- 4) Custom programs are software programs designed and created specifically for the user for his or her own use or consumption.
- 5) Software as a Service – software that is rented, leased, or subscribed to from a provider and used at the consumer's location, including, but not limited to, applications, systems, or programs.
- 6) Software License Fee – fee charged for the right to use, access, or maintain software programs.

Sales tax is due on the sale, rental, lease, or subscription of systems programs, application programs, pre-written programs, or software as a service.

Custom programs, created specifically for one user are not subject to sales tax; however, if a pre-written program is significantly modified to create a custom program for that user, tax would be due on the charge for the pre-written program. Programming charges to customize the software for that user would not be subject to tax.

SOFTWARE MAINTENANCE AGREEMENTS

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

If the maintenance fee is mandatory to maintain the right to use the programs, then the maintenance fee is subject to sales and use tax.

If the maintenance fee is **NOT** mandatory to maintain the right to use the programs, then the substance of what the fee entitles the customer to receive must be considered for taxation. If the maintenance fee includes updates to the programs, or the rights to updates and modifications if they occur, then that fee is part of the charge for the program and is subject to tax. If the maintenance fee is only for technical support and does not entitle the customer to program revisions, then it is not subject to tax.

WHEN FORT COLLINS' SALES OR USE TAX APPLIES

- 1) The sale, storage, use, distribution, or consumption must occur in Fort Collins.
 - Software that is used in Fort Collins is subject to Fort Collins' sales or use tax, regardless of where the software resides (inside or outside of Fort Collins).
 - If the software resides on a server outside of Fort Collins and one or more users located in Fort Collins access the software, only the charges attributable to the use of the software in Fort Collins is subject to Fort Collins' taxes.
 - Fort Collins' tax is due only on the portion of the purchase price attributable to the software used in Fort Collins.
 - Software sold with a single license, that is located on a computer or at data center in the City of Fort Collins is subject to tax regardless of where the users are located.
- 2) Mandatory service charges to acquire software programs.
 - All mandatory service charges that must be paid by the retail purchaser to acquire title or possession of the software are subject to sales or use tax, even if the mandatory service charges are separately stated in a contract, invoice, or other transaction document. A service charge is mandatory if the retail purchaser cannot acquire title or possession of the software from the retailer without also paying the additional charge.

EXAMPLES

1. Superior Accommodations, which operates a hotel in Fort Collins, is a franchisee of a national hotel chain. As part of its franchise agreement, Superior pays for licenses to use the franchisor's internet-based reservation software. Superior's reservation system automatically uploads and downloads information pertaining to room availability, reservations, price information, and reports to and from the franchisor's reservation system. The full amount paid by Superior for the right to access the franchisor's reservation software is taxable.
2. A Fort Collins business receives an invoice for their accounting software's optional annual maintenance agreement in the amount of \$5,000. The invoice states that the agreement includes 500 hours of technical support and free software upgrades. Because the agreement includes the right to future software upgrades, the \$5,000 fee is taxable.
3. Company A, located in Fort Collins, purchases pre-written software from Software Retailer, a licensed Fort Collins retailer. Software Retailer requires that Company A also purchase its software implementation service in order to acquire the pre-written software. Company A must pay sales tax to Software Retailer on the purchase price paid for the pre-written software and the implementation service. Because Company A's purchase of the implementation service is mandatory, the stated charge for the service is considered part of the taxable purchase price for the software.
4. Company A, located in Fort Collins, purchased several licenses to use software from Company B, located in Florida. Company A's employees access the software, located on Company B's server in Florida, via the Internet. In addition to their monthly license fee, Company B also charges Company A a mandatory monthly CPU usage charge. In this example, both the monthly license fee and the CPU usage charge to use the software are taxable.

CITY OF FORT COLLINS SALES AND USE TAX ORDINANCE

Section 25-71	Definitions
Section 25-72	Legislative intent
Section 25-73	Imposition of the sales tax and exemptions
Section 25-74	Imposition of the use tax and exemptions

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