

## Remotely Accessed Software

### Changing Technology Requires Law Change

Computer software has been subject to sales and use tax in Tennessee since 1977. When enacted, and in subsequent amendments, the law addressed the methods by which customers accessed and used computer software at that time. Changing technology, however, has made it possible to use software remotely through the Internet.

To address this change in technology, Public Chapter 514, effective July 1, 2015, says that the taxable use of computer software in Tennessee includes the access and use of software that remains in possession of the seller and is remotely accessed by a customer for use in this state. This provision ensures that software remains subject to sales and use tax regardless of a customer's method of use.

### Collection of Tax by the Seller

The seller must collect tax at the 7% state tax rate, plus the applicable local tax rate, on the sales price for the use of remotely accessed software during billing periods that begin on or after July 1, 2015. The tax applies to any access and use of the software from a location in Tennessee, and it applies whether the charge for the software is on a per use, per user, per license, subscription, or any other basis. The software is accessed from a location in Tennessee if a customer's residential or primary business address is in this state.

### Payment of Tax by the User

If the seller does not collect the tax, purchasers in this state who remotely access and use software must report and pay use tax directly to the Department on the purchase price for the use of the remotely accessed software.

### Users in Multiple States <sup>1</sup>

If the purchaser pays for access to software that will be used by individuals who are located in this state, and other individuals who are located outside this state (for example, the purchaser's employees), then the price paid by the purchaser may be allocated based on the percentage of users located in Tennessee to determine the amount subject to Tennessee tax. This may be done in one of two ways.

If the purchaser is registered for Tennessee sales and use tax purposes, then it may use the new Remotely Accessed Software Direct Pay Permit form to purchase the software without paying tax to the seller. The purchaser then must directly pay the tax to the Department on the portion of the price that corresponds to the percentage of users located in Tennessee. The form must include the purchaser's Tennessee sales and use tax registration number. See important notice 15-24 for more information about the newly created Remotely Accessed Software Direct Pay Permit that became available for use December 2015.

If the purchaser is not registered for Tennessee sales and use tax purposes, then it may use a fully

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<sup>1</sup> This section was updated in December 2015 to detail a new Department form and procedure.

completed Streamlined certificate (available on the Department's website) to claim an exemption for the portion of the price that corresponds to the percentage of users located outside Tennessee. The seller must collect tax from the Tennessee customer on the percentage of the price that is allocated to Tennessee.

The Streamlined certificate must include the purchaser's federal identification number. In addition, on Line 5, "Reason for Exemption," the customer should circle "Other" with an explanation such as, "remote access software used by employees located in multiple states" and specify the percentage of users located outside of Tennessee.

A purchaser that is registered for Tennessee sales and use tax purposes may use either the Remotely Accessed Software Direct Pay permit to directly pay the tax, or the Streamlined certificate to claim exemption. A purchaser that is not registered for Tennessee sales and use tax purposes may only use the Streamlined certificate to claim exemption.

#### **Purchases for Resale**

A dealer that purchases software exclusively for the purpose of providing remote access and use of that software to its customers may purchase the software without tax using a resale certificate.

#### **Fabricating Software for Your Own Use**

Remote access and use of software by the purchaser exclusively for fabricating other software that is owned and used only by that person is exempt from sales and use tax.

#### **Information Services, Data Processing Services, and Others Are Not Subject to Tax**

As discussed above, this public chapter says that software is subject to sales and use tax to the same extent, regardless of the method of delivery or use. Likewise, various services are not subject to sales and use tax, regardless of the method of delivery. Such services include, but are not limited to: information or data processing services (including the capability of the customer to analyze such information or data provided by the dealer); payment or transaction processing services; payroll processing services; billing and collection services; Internet access; the storage of data, digital codes, or computer software; or the service of converting, managing, and distributing digital products. These services are not subject to tax even if the purchaser uses remote access to utilize or receive the service.

#### **For More Information**

Visit [www.tn.gov/revenue](http://www.tn.gov/revenue). The Department will be providing ongoing guidance through our [Revenue Help](#) feature on our website.

If you have a specific question that you would like to see addressed, click on Revenue Help to submit a question. Choose the option "remotely accessed software" from the drop-down box.

#### **References**

Tenn. Code Ann. § 67-6-231; Public Chapter 514 (2015); Important Notice 15-24