

Massachusetts Issues Technical Guidance on New Provisions Imposing Sales and Use Tax on Various Software Services

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Overview

On July 24, 2013, The Massachusetts Legislature enacted H3535, **An Act Relative to Transportation Finance** (the “Bill”), which contained a number of tax provisions including the imposition of sales and use tax on computer system design services and modification, integration, enhancement, installation or configuration of standardized software.¹ On July 25, 2013, the Department of Revenue issued Technical Information Release (“TIR”) 13-10, to provide initial guidance regarding these new sales tax provisions, including applicable sourcing rules, transition rules for existing contracts, calculation of use tax liability and the effective date and its impact on filings and payments.²

Sales and Use Tax on Computer/Software Services

The Bill imposes sales and use tax on computer system design services and the modification, integration, enhancement, installation or configuration of standardized software.³ Prior to the Bill, the only services Massachusetts taxed were telecommunications services.⁴ The Bill defines computer system design services as “the planning, consulting or designing of computer systems that integrate computer hardware, software or computer technologies and are provided by a vendor or a third party.” The changes take effect beginning July 31, 2013.⁵

In the TIR, the Department provides additional guidance with respect to what types of computer software services will be subject to sales and use tax. The TIR states “the new provisions serve as overlapping descriptions generally intending to tax software services that modify, enable, or adapt prewritten software to meet the business or technical requirements of a particular purchaser and to operate on the purchaser’s computer systems, regardless of how those services are described or billed to the customer.” Taxable services may also be “described as customization services with respect to prewritten software.” Accordingly, it appears that sales and use tax may apply to a broad range of computer software services.

The Department carves out an exemption for personal or professional services that do not themselves constitute computer system design services or software modification services and that are not directly related to a particular systems integration project involving the sale of computer hardware or software. Examples of such non-taxable personal and professional services may include (a) consulting and evaluation services with respect to existing computer systems to identify deficiencies and needs, and (b) services to prepare a business to use modified software, such as training.

Sourcing Rules

For purposes of sourcing the sale of these services, the Department provides a hierarchy as follows:

¹ *An Act Relative to Transportation Finance*, St. 2013, c. 46, H3535, at §§ 48 and 49. See: [Session Laws: CHAPTER 46 of the Acts of 2013](#). For our earlier alert on the entire bill see: [Deloitte | Deloitte Tax LLP | Multistate Tax | Tax | Multistate Tax Alert: Massachusetts Legislation Includes Multiple Tax Law](#)

² Ma. DOR TIR 13-10 (7/24/2013). Available at: [TIR 13-10: Computer and Software Services Law Changes](#).

³ H3535 at §§ 48 and 49.

⁴ See M.G.L. c. 64, § 1.

⁵ H3535 at § 89. Ma. DOR TIR 13-10.

- If the purchaser receives the service at a business location of the vendor, the retail sale is sourced to that business location of the vendor;
- If the vendor knows the location where the service is received based on instructions provided by the purchaser, tax is due based on that location, (if such use does not constitute bad faith);
- If no location is specified, the vendor must collect tax based on the purchaser's known address or based on information known to the vendor (e.g., as collected to complete the sale); or
- If neither the delivery location nor the purchaser's address can be determined, then the vendor must collect tax based on the address of the vendor from which the sale was made.

Alternatively, if the purchaser of Computer/Software Services will use such services concurrently in more than one jurisdiction, the purchaser may provide the vendor a completed Multiple Points of Use Certificate, acceptance of which will relieve the vendor of liability for collecting tax and will require the purchaser to self-remit use tax on such services based on where such services are used.

The sourcing guidance that the Department provides in the TIR is different for software modification services and sales of computer system design services. The TIR states that sales of software modification services relating to prewritten software generally should be sourced in the same manner as the software. However, computer system design services should be sourced to reflect the location of use of the computer system design work by the purchaser which will be considered to be used by those parts of a business that utilize the computer system and in the locations where such use occurs.

Payment of Use Tax

Use tax is due from the purchaser if a vendor of Computer/Software Services was not required (or otherwise failed), to collect Massachusetts sales tax, or where the user provides the vendor a Multiple Points of Use Certificate. Use tax is due based on the portion of such Computer/Software Services which are purchased for use in Massachusetts. The purchaser may use a reasonable, but consistent and uniform, method of apportionment that is designed to reflect the location of use of the Computer/Software Services.

Transition Rule for Existing Contracts

Contracts for taxable Computer/Software Services entered into before July 31, 2013, the effective date of the tax, are taxable to the extent a payment under such a contract is invoiced or billed on or after July 31, 2013, and where such payment relates to services performed on or after July 31, 2013.

Filing Requirements

For the convenience of taxpayers and to facilitate administration, the DOR directs that Computer/Software Services transactions for July 31, 2013 shall be reported and paid together with August 2013 transactions by the September 20, 2013 due date for August 2013 transactions. There will be a separate line on Form ST-9 for reporting the tax on these services.

Considerations

As a result of this change in law, providers of software services, whether or not they are selling the underlying software, may need to collect and remit Massachusetts sales and use taxes. Prior to this change, software service providers who were not selling software or other tangible personal property were not required to collect sales and use taxes in Massachusetts. Accordingly, although the change will impact software vendors who provide services, it will also impact consulting companies and other professional service providers who merely provide services related to software. This change will require affected service providers to register as vendors with the DOR in order to comply with these new provisions. Similarly, businesses in Massachusetts that are purchasing software services, will need to be aware of the change to start self-assessing use tax on their purchases where their service providers do not appropriately collect the sales and use tax, and/or to provide a form ST-12 Multiple Points of Use Certificate if applicable.

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