

Technical Corrections were made to this notice on November 16, 1998 by Revenue Notice # 98-22.

Revenue Notice # 93-17

Sales and Use Tax - Computer Software Maintenance Agreements

Minnesota Rule, part 8130.9910, relating to computer software became effective on September 14, 1993. The rule sets forth the sales tax treatment of computer software maintenance agreements and reflects a change in the manner in which optional canned computer software maintenance agreements will be taxed.

Previously, an optional maintenance agreement for canned software that provided for updates or enhancements, in addition to providing nontaxable support services, was taxable on the total charge for the maintenance contract when the charges for the nontaxable services were not separately stated. Under the new rule, an optional maintenance agreement for canned software that provides for upgrades and enhancements, in addition to nontaxable support services, will be taxed on 20 percent of the total charge for the maintenance contract, when the fee for support services is not separately stated. If the fee for support services is separately stated, only the portion of the charge representing upgrades and enhancements will be subject to tax.

The Department will apply the provisions of the new computer software rule to all open tax years. All pending audits and appeals will be handled using the provisions of the new rule. Refund claims may be filed for sales taxes previously paid under software maintenance agreements provided that the tax periods are still open under the statute of limitations and provided that the refund will be returned to the purchaser by the vendor.

Rule 8130.9910 provides that the transfer of software, delivered on storage media or by any other means, that provides new or significantly improved functionality to an existing software program would constitute an upgrade or enhancement. The rule provides that the transfer of software to correct errors in existing software programs shall constitute a nontaxable support service.

Upgrades and enhancements would include all transfers of software, including updates, which provide information and directions that provide new or significantly expanded functionality to a computer program and that are not error corrections. Upgrades could include software providing updated tables, such as employee withholding tables or postage rates as well as software providing current statutes and regulations.

Michael E. Boekhaus, Director

Appeals, Legal Services and Criminal Investigation Division

Dated : September 20, 1993

GJH