

City of Colorado Springs

# Tax Guide

## Software

Hardware and pre-written software is tangible personal property and subject to city tax. Hardware and software may be sold as a package or sold separately. The taxability of software is not dependent upon where the software program physically resides, but rather is based on the right to access, use, store, or consume the property.

The sale or purchase of software may be taxable or exempt as circumstances indicate. Software may be broadly classified into two categories; pre-written software and custom software.

### Pre-written software

Pre-written software is taxable. Pre-written software is commonly referred to as “canned,” or “off the shelf” and is typically developed for sale or license to multiple users.

Pre-written software may also include software modules or components that are designed to be integrated into a larger software package.

Software that is already loaded on a computer when the computer is sold is taxable.

Purchases of software that are downloaded, accessed, licensed, or consumed by other means are taxable.

If software implementation includes both the sale of pre-written software and services necessary to enhance or adapt the program to the user’s system, the entire charge is taxable unless the selling price of the pre-written component and the labor are separately stated.

### Creation of Custom Software

The creation of custom software is generally a non-taxable service. Custom software is written or designed to meet the needs of one specific user, and its value lies in the creation or development of the program. Pre-built software that is modified or altered is not custom software.

The purchase of tangible personal property by the custom software developer used in the performance of a ‘nontaxable service’ **is taxable** to the developer.

The purchase of any custom software programs must be evaluated in detail to determine the full extent of the taxability.

### CS CODE SECTION

2.7.104 Words and Phrases:  
Price or Purchase Price,  
2.7.201, 2.7.312, 2.7.438

### Related Tax Guides

Service Sales

Agilent Technologies v. City of  
Colorado Springs 2005

*This Tax Guide provides an  
overview of specific  
subject matter and is not  
intended to be substituted  
for the full text of the City  
of Colorado Springs*

Tax Code  
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## Software Maintenance Agreements

Software is sometimes sold or licensed for use with a maintenance agreement. The agreement may be sold as a mandatory agreement or optional agreement.

A mandatory maintenance agreement that accompanies the sale of software or grant of a license is considered part of the selling price and is taxable.

An optional maintenance agreement to maintain computer software may be taxable or exempt depending on what is provided within the agreement. If an optional agreement entitles the customer to program enhancements such as upgrades, modifications, patches, revisions, discounts on additional software purchases, the agreement is taxable. If the agreement only includes technical support or other non-taxable services, the service portion of the agreement is not taxable if separately stated on the invoice.

## Computer Software Services

Charges for manipulation of client-owned data such as payroll services and computer accounting services are data processing services and are not taxable. However, charges for a physical product that results from data processing services are taxable. City tax is due on the sale of products such as non-custom mailing lists or informational reports regardless of how the data is accessed.

## Common Examples

1. A business purchases personal computers and software for its own use. They also purchase software maintenance agreements that entitle the company to all future revisions. The personal computers, software, and maintenance agreements are all taxable.
2. A business purchases an optional maintenance agreement that only includes 24-hour telephone support. No tangible personal property or taxable service is to be provided, so the agreement is not taxable.
3. A business employs a software consultant to modify their existing software. The consultant supplies programmers to write modifications to the software for a fixed rate fee. Throughout the modifications, the business owns all of the work for hire or work in progress. The fixed rate for the consulting services is not taxable because there is not a transfer of title or possession of the software program.
4. A software company has a contract to provide software and license foundation codes, and services to modify the ERP platform. The sale of the software and license foundation codes, even if later modified, is taxable. The sale of the service to modify the software is not taxable if separately stated. See *Agilent Technologies v. City of Colorado Springs* 2005.