

The Louisville Municipal Code (“LMC”) imposes sales/use tax on the purchase price paid for Software Programs, Software as a Service, Software License Fees, and Software Maintenance Agreements. Separately stated technical support charges are exempt from Louisville sales or use tax.

City tax applies regardless of whether the above software-related items or services are purchased, leased, rented, used, stored, distributed, consumed, subscribed to, or the user is granted a conditional or absolute right to use the software or service, such as with a license or similar, and regardless of delivery method.

“Software Program” means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes:

- Pre-written software program, which is a software program prepared for sale or license to multiple users and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as “canned,” “off-the-shelf, (“COTS”),” “mass produced” or “standardized”;
- Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and
- The generic term “software,” “software application,” as well as “updates,” “upgrades,” “patches,” “user exits,” and any items which add or extend functionality to existing software programs.

“Software as a Service” means 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.

“Software License Fee” means a fee charged for the right to use, access, or maintain software programs.

“Software Maintenance Agreement” means an agreement, typically with a software provider, that may include:

- Provisions to maintain the right to use the software
- Provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software.

Special Order Custom Software Programs

Special order custom software programs developed to the special order or specifications of a single customer and billed to the customer on an hourly labor basis is exempt from Louisville sales/use tax. Subsequent sales of custom software or programs will be treated as prewritten modified or enhanced software and taxed accordingly regardless of delivery method.

The information contained in the Tax Guide publications is intended to offer general guidance in layman’s terms, for this topic, industry or business segment, and is not intended for legal purposes to be substituted for the full text of the Louisville Municipal Code rules and regulations. This guide does not constitute a city tax policy.

Software Maintenance Agreements

Mandatory software maintenance agreements, which are included as part of the purchase price of the software, hardware or license agreement, are subject to Louisville sales/use tax.

Optional maintenance agreements, which include the right to use the software and the provision for any upgrades, code updates, version updates, code fix modifications, enhancements, or any added or new functional capabilities loaded into existing software, are subject to Louisville sales or use tax.

Examples

1. An out-of-state company maintains a local office in Louisville. The local Louisville office purchases 10 annual software licenses for \$100 each to access the corporate accounting system. The servers on which the accounting system is located are out-of-state. Minimal software is required to be installed locally. The license fees are subject to Louisville sales/use tax.
2. A Louisville business utilizes a third-party company for their IT services and has an optional maintenance agreement. The third-party provides “help desk” assistance for all the daily IT functions, for print or software errors, setting up new users, and occasionally installs new software. The third-party IT company charges an hourly rate for the help desk issues. City sales or use tax is due for any standard software purchased, downloaded or installed by the Louisville business. The hourly help desk support is exempt from City sales or use tax if separately stated on the customer invoice.
3. Louisville Business X purchases accounting software from the internet to track its sales and expenses. The business downloads the software at a cost of \$179. There is no tax added to the cost of the software during the checkout/payment process. Business X must pay City use tax on the cost of the software.
4. A leasing company leases computers to a Louisville business and requires that a maintenance agreement be sold with all leases. The maintenance agreement is subject to Louisville sales/use tax because it is mandatory.
5. A software company sells an optional service agreement with the sale of its software package for \$3,000. The service agreement consists of online support, updates and security patches. Because the non-taxable support labor is not separately stated on the invoice, the full \$3,000 is subject to Louisville sales/use tax.

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