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COMPUTER HARDWARE AND SOFTWARE

This tax guide is prepared and published for the information of the general public and all persons in business pursuits who would be required to make payment of Sales Tax or Use Tax under provisions of Chapter 25, Article III of the Code of the City of Fort Collins (the "Tax Code"), as well as for the guidance of the City employees whose responsibility it is to collect the taxes imposed by the Tax Code and the enforcement thereof. The following guide is exactly as it says, a GUIDE, and not to be relied upon as an official interpretation of the Tax Code applicable in all circumstances. Instead, specific reference should be made to the Tax Code and related ordinances for what is required in any particular circumstance.

COMPUTER HARDWARE

The sale, lease, or rental of computer hardware, including central processing units and all peripheral equipment, parts, and supplies, is subject to the sales and use tax.

Non-taxable sales include charges for labor or services rendered in installing or applying computer hardware.

A business may purchase a computer tax-free only if the hardware is purchased for the exclusive purpose of resale. If the purchaser makes a taxable use of the hardware while holding it for resale, the purchaser is liable for use tax.

COMPUTER SOFTWARE

"Computer program" means a series of instructions sold as a completed program which are coded for acceptance or use by a computer system and which are designed to permit the computer system to process data and provide results and information. The series of instructions may be contained in or on magnetic tapes, semiconductor chips, punched cards, printed instructions, or other tangible or electronic media. This definition includes computer game cartridges that allow certain games to be played on a television set through interaction with a computer or on home computers. The combining of several existing program modules into a new program will be considered the sale of a completed program.

A software program is one in which instructions and routines (programs) are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his EDP system.

The software may be in the form of:

- 1) Systems programs (except for the instruction codes which are considered tangible property in paragraph 1 above)—programs that control the hardware itself and allow it to compile, assemble and process application programs.
- 2) Application programs—programs that are created to perform business functions, or control, or monitor processes.
- 3) Pre-written programs (canned) programs that are either systems programs or application programs and are not written specifically for the user.
- 4) Custom programs are software programs designed and created specifically for the user for his or her own use or consumption.

Sales tax is due on the sale or lease of system programs, application programs and pre-written computer programs. Custom programs, created specifically for one user are not subject to sales tax; however, if a pre-written program is significantly modified to create a custom program for that user, tax would be due on the charge for the pre-written program. Programming charges to customize the software for that user would not be subject to tax.

SOFTWARE LICENSES

If the software license is giving the user the right to maintain a copy of the information in any printed, digital or other format (including magnetic, optical or a similar storage medium), the license is subject to sales tax. (For example, if the user purchases Microsoft Office licenses in lieu of purchasing the pre-packaged software through the vendor, the licenses would be subject to sales tax).

SOFTWARE MAINTENANCE AGREEMENTS

Software programs are sometimes sold, or are licensed for use, with an additional fee, generally called a maintenance fee.

If the maintenance fee is mandatory to maintain the right to use the programs, then the maintenance fee is subject to sales and use tax.

If the maintenance fee is **NOT** mandatory to maintain the right to use the programs, then the substance of what the fee entitles the customer to receive must be considered for taxation. If the maintenance fee includes updates to the programs, or the rights to updates and modifications if they occur, then that fee is part of the charge for the program and is subject to tax. If the maintenance fee is only for technical support and does not entitle the customer to program revisions, then it is not subject to tax.

CITY OF FORT COLLINS SALES AND USE TAX ORDINANCE

Section 25-71 Definitions.

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