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[State Online Services](#)

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For
Businesses

For
Local Officials

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Tax Professionals

[Home](#) > [Businesses](#) > [Help & Resources](#) > [Legal Library](#) > [Letter Rulings](#) > [Letter Rulings - By Year\(s\)](#) > [1984 and Prior](#) > [1984 Rulings](#) >

Letter Ruling 84-12: Sale, Rental and Maintenance of Computer Programs

But see TIR 05-15 and 830 CMR 64H.1.3, as amended.

March 5, 1984

("Company") is a computer software supplier. You inquire whether the Company's charges for the sale, rental, or "maintenance" of computer programs are subject to the Massachusetts sales or use tax.

Customers of the Company who purchase or rent a program package are entitled to "maintenance" at no charge for an initial period. The Company "maintains" the program packages by transferring to the customer program modifications and new programs that the company has developed for general use by all customers who have purchased or rented a given package.

After the initial period, customers may engage the Company to continue to provide the maintenance, under contracts that call for payment of a fixed monthly charge. (In addition, separate charges may be made under the contracts for extraordinary maintenance.)

You state that the programs that are sold or rented by the Company are transferred to customers either on magnetic media or over telephone lines. You further state that program modifications and new programs that are provided to customers under maintenance contracts generally are transferred to customers over telephone lines, but may be transferred on magnetic media.

The sales and use taxes are imposed with respect to retail sales of "tangible personal property" (G.L. c. 64H, § 2; G.L. c. 64I, § 2).

In determining the sales price of property on which the sales and use taxes are based, no deduction may be taken on account of the cost of materials used, labor or service cost, interest charges, losses or other expenses, and any amount paid for any services that are a part of a sale must be included (G.L. c. 64H, § 1(14)).

Transfers of programs recorded on magnetic media generally are subject to the sales tax (see Subsection (6) of Sales and Use Tax Regulation 830 CMR 64H.06).

Based on the foregoing, it is ruled that:

1. The Company's charges under sale, rental or "maintenance" agreements, for programs or program modifications that are transferred to a customer on magnetic media, are subject to the sales or use tax.
2. The Company's charges under sale, rental or maintenance agreements, for programs or program modifications that are transferred to a customer over telephone lines, are not subject to the sales or use tax.
3. Where, for a single charge, the Company transfers programs or program modifications both on magnetic media and over telephone lines, the entire charge is subject to the sales or use tax.

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Ira A. Jackson

Commissioner of Revenue

March 5, 1984

LR 84-12