

By Ms. Pollard, a petition (accompanied by bill, Senate, No. 1693) of Samuel Rotondi and Robert Bigelow for legislation relative to clarifying the application of the sales and use tax law to custom computer programs. Taxation.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-three.

AN ACT RELATIVE TO CLARIFYING THE APPLICATION OF THE SALES AND USE TAX LAW TO CUSTOM COMPUTER PROGRAMS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of Chapter 64H, as most recently
2 amended by Chapter 314, of the Acts of 1978, is hereby fur-
3 ther amended by inserting the following after Subsection
4 (12): —

5 (12A) "Sale" and "selling" do not include the design,
6 development, writing, translation, fabrication, lease, license,
7 or transfer for consideration of title or possession of a custom
8 computer program, either in the form of written procedures
9 or in the form of storage media on which or in which the pro-
10 gram is recorded, or any required documentation or manuals
11 designed to facilitate the use of the custom computer program
12 so transferred. As used in this subsection: —

13 (a) "Storage media" includes punched cards, tapes, discs,
14 diskettes, or drums on which computer programs may be em-
15 bodied or stored.

16 (b) "Computer program" means the complete plan for the
17 solution of a problem, such as the complete sequence of auto-
18 matic data and includes both systems and application pro-
19 grams and subdivisions, such as operating systems, utility pro-
20 grams, assemblers, compilers, routines, and generators.

21 (c) "Custom computer program" means a computer pro-
22 gram prepared to the special order of the customer and in-
23 cludes those services represented by separately stated charges
24 for modifications to an existing prewritten program which are
25 prepared to the special order of the customer. The term does

26 not include a “canned” or prewritten computer program which
27 is held or exists for general or repeated sale or lease, even if
28 the prewritten or “canned” program was initially developed
29 on a custom basis or for in-house use. Modification to an ex-
30 isting prewritten program to meet the customer’s needs is
31 custom computer programming only to the extent of the modi-
32 fication.

1 SECTION 2. The General Court finds and declares that the
2 sales and service of custom computer programs as defined in
3 Section 1(12A) of Chapter 64H are service transactions not
4 subject to sales or use taxes under any existing state law. The
5 use of any storage media in the transfer of custom computer
6 programs is only incidental to the true object of the trans-
7 action, which is the performance of a service. Therefore, the
8 General Court declares that Section 2 of this Act is declara-
9 tory of, and not a change in existing law. It is the intent of
10 the legislature in enacting this Act to clarify the existing law
11 and to affect all applicable pending proceedings.