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## Tax Compliance Guide

### Software Topic 359

(03/2020)

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### Pre-written Computer Programs

The purchase price paid for systems programs or application programs that are not written specifically for a particular user is subject to Westminster City sale/use tax. Tax applies regardless of whether the software is purchased, leased, rented, or the purchaser is granted a right to use the software such as with a license.

Tax also applies regardless of the medium of transmission. Software that is downloaded or obtained via electronic mail or other electronic transmission is subject to tax as is software that is obtained from a CD, disk, tape, or other similar method. Software used remotely via dial-in access, high speed network access, Internet access, or other similar means is subject to tax even though the local machine may have little or no software installed. Customized computer programs, as defined, are exempt from Westminster City sales/use tax. In addition, labor sold to modify pre-written software programs, if such labor is stated separately on the invoice from the prewritten software program is exempt from Westminster sales/use tax.

While many software maintenance agreements include provisions for technical support and troubleshooting, these maintenance agreements generally represent the right to future releases, upgrades, updates, security patches, or other modifications or improvements. As such, most software maintenance agreements are subject to City sales/use tax. Software agreements are not taxable only if:

1. They are not mandatory for the purchase, lease, or rental of the underlying software (including software licenses); and
2. They are separately stated from the purchase price, lease, or rental payment amount (including the amounts for software licenses); and
3. They are strictly for technical support and do not include the right to any future releases, upgrades, updates, security patches, or other modifications or improvements.

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### Examples

1. An individual is starting a home-based business and has just obtained a Westminster home occupation license. In order to help track her sales, she downloads a sales program from the internet for \$29.95. The software vendor does not collect sales tax. She must report and pay a use tax on the \$29.95 charge on her next periodic City sales/use tax return.
2. An out-of-state business maintains a local office in Westminster. The local office purchases 10 annual software licenses for \$100 each to use the corporate accounting system, which is housed out-of-state. The system requires minimal software to be installed locally. The \$100 charge is subject to Westminster sales/use tax because it represents the grant of a license to use a pre-written computer program.

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### Data Processing Services

Data processing services where the client transmits data for processing, such as payroll services, are generally not subject to tax. In determining whether the purchase represents use of a computer program or the purchase of data processing services, the City examines the degree to which the purchaser accesses and/or inputs into the seller's applications; the degree to which the purchaser schedules, initiates, executes, or otherwise controls the processing or manipulation of the data; the degree to which the purchaser interacts with the programs before, during, and after processing; the output medium; and other activities which would indicate use. Charges for physical outputs, such as forms or checks, are subject to Westminster City sales/use tax.

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### Software Maintenance Agreements

3. A Westminster business hires a payroll service to process its bi-weekly payroll. The business accesses the service's website to input details regarding the employees, such as pay rates, withholding amounts, and start and termination dates. Daily timecard punches are downloaded on to a tape that is sent to the service for processing. The service returns the tape, along with a payroll ledger report and checks for each employee. The service charges \$50 for processing, \$10 for the ledger report, and \$3.50 per each check printed. The fees for the ledger report and the checks are subject to Westminster sales/use tax.
4. A Westminster business receives an invoice for their accounting software's optional annual maintenance agreement in the amount of \$3,000. The invoice states that the agreement includes 500 hours of technical support and free upgrades. Because the agreement includes the right to future upgrades, the \$3,000 fee is taxable.

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## Related Topics

Maintenance Agreements

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## Citations

*Westminster Municipal Code*

§ 4-2-2 Definitions

§ 4-2-3. Rate; Imposition and Collection; Distribution

§ 4-2-5. Transactions & Items Subject to Tax

THIS GUIDANCE IS A SUMMARY IN LAYMEN'S TERMS OF THE RELEVANT WESTMINSTER TAX LAW FOR THIS TOPIC, INDUSTRY, OR BUSINESS SEGMENT. IT IS PROVIDED FOR THE CONVENIENCE OF TAXPAYERS AND IS NOT BINDING UPON THE CITY. IT IS NOT INTENDED FOR LEGAL PURPOSES TO BE SUBSTITUTED FOR THE FULL TEXT OF THE WESTMINSTER MUNICIPAL CODE AND APPLICABLE RULES AND REGULATIONS. THIS GUIDE DOES NOT CONSTITUTE A CITY TAX POLICY.

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## Contact Us

For additional assistance, please contact us:

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Administrative offices are open Monday through Thursday from 7:00a.m. to 6:00p.m. (closed Friday).

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From the Business menu, choose Westminster Taxes