

[<<Prev Rule](#)[Next Rule>>](#)

Texas Administrative Code

TITLE 34

PUBLIC FINANCE

PART 1

COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3

TAX ADMINISTRATION

SUBCHAPTER O

STATE AND LOCAL SALES AND USE TAXES

RULE §3.308

Computers--Hardware, Computer Programs, Services, and Sales

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Computer program--A series of instructions that are coded for acceptance or use by a computer system and that 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.

(2) Contract programming--Services to create or develop a new computer program, or to repair, maintain, modify, or restore an existing computer program, when the person performing the services did not sell, and retains no rights in, the computer program being created, developed, repaired, maintained, modified, or restored.

(A) Examples of contract programming include:

(i) writing a new computer program to perform a particular function for the customer where all rights in the program are transferred to the customer;

(ii) customizing a computer program owned by the customer or licensed to the customer by a third party;
or

(iii) modifying a computer program or performing repair, maintenance, or restoration on a computer program that the programmer wrote for the customer under a prior contract programming agreement.

(B) Contract programming only occurs when the person performing the programming services transfers all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, to the computer program being created, developed, modified, maintained, repaired, or restored to the purchaser of the contract programming services. Notwithstanding other provisions of this paragraph, a person performing contract programming services may retain rights to property including materials, tools, methods, and processes used in the performance of the service. A person performing contract programming services may also retain rights to an incidental program or incidental component of a program included under an agreement to provide contract programming services. Examples of incidental programs and incidental components of a program are installers, drivers, macros, and subroutines.

(3) Internet hosting--Providing to an unrelated user access over the Internet to computer services using property that is owned or leased and managed by the provider and on which the user may store or process the user's own data or use software that is owned, licensed, or leased by the user or provider. The term does not include telecommunications services.

(b) Hardware.

(1) 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.

(2) A taxable rental or lease can occur without the right to move the hardware if the lessee has total operational control of the hardware. For example, a lessee may contract to use a computer on the owner's premises for an exact period of time weekly. The lessee provides the operator and all materials. During the time of use by the lessee, no one else may use the hardware. This transaction constitutes a transfer of the total operational control of the hardware, which is a lease or rental of tangible personal property. However, if the owner provides and directs the operator, operational control has not been transferred to the lessee. The transaction will not be considered the rental or lease of the hardware. Note: if the only supervision provided by the owner is for maintenance or training on proper use, this is not providing an operator. See §3.294 of this title (relating to Rental and Lease of Tangible Personal Property).

(3) Sales tax is due on charges for labor or services rendered in installing or applying computer hardware.

(4) Sales tax is due on charges for labor or services rendered in remodeling, repairing, maintaining, or restoring computer hardware. See §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property).

(5) Installation charges for remote terminals are taxable whether or not separately stated. Charges for telephone lines are taxable.

(c) Computer programs and related services.

(1) Computer programs.

(A) The sale, lease, or license of a computer program is a sale of tangible personal property. Tax is due when the computer program, or a license to use the computer program, is transferred for consideration in Texas, or stored, used, or consumed in Texas, in electronic form or on physical media.

(B) Sales price. The sales price of a computer program includes all charges made in connection with the sale of the program, which may include charges for installation, modification, repair, maintenance, or restoration, whether or not separately stated.

(C) The sales price of a computer program, or a single license for a computer program, that is sold or used in Texas may not be allocated to other states based on the purchaser making copies of the program for use in another state; installing the program on hardware located in another state; or accessing the program in another state.

(2) Computer program repair, maintenance, and restoration. Charges for computer program repair, maintenance, or restoration by a person who sold the computer program are taxable. Computer program repair, maintenance, or restoration includes error correction, technical fixes, and technical support, whether provided over the Internet or over the phone.

(3) Instruction. Separately stated charges for instruction on the use of the computer program by a person who sold the computer program are not taxable.

(4) Contract programming services. Contract programming may result in the creation of tangible personal

property, but it does not constitute the sale thereof. Charges for contract programming are charges for a service and are not taxable.

(d) Sales. The following are examples of transactions which involve the sale of taxable items and are taxable.

(1) A separate charge for additional copies of the result of services is taxable.

(2) The charge for processing, printing, or producing tangible personal property by a computer is taxable unless the processing, printing, or producing is performed as an incidental part of a nontaxable service. Examples of taxable processing, printing, or producing include standardized amortization or depreciation tables, newsletters, and advertising.

(e) Sales for resale.

(1) A resale certificate may be issued by a purchaser only if hardware or a computer program is purchased for the exclusive purpose of resale. If the purchaser makes a taxable use of the hardware or computer program while holding it for resale, the purchaser is liable for sales tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(2) Internet hosting providers.

(A) A sale for resale includes the sale of a computer program to an Internet hosting provider in a transaction that meets all criteria in this subparagraph, regardless of whether care, custody, and control of the computer program is transferred to the user of the Internet hosting service.

(i) The Internet hosting provider acquires the program from an unrelated vendor for the purpose of selling the right to use the program to an unrelated user of the provider's Internet hosting services in the normal course of business and in the form or condition in which the provider acquired the program;

(ii) the Internet hosting provider offers the unrelated user a selection of computer programs that are available to the public for purchase directly from an unrelated vendor;

(iii) the Internet hosting provider executes a written contract with the unrelated user that specifies the name of the computer program sold to the unrelated user and includes a charge to the unrelated user for computing hardware;

(iv) the unrelated user purchases the right to use the computer program from the Internet hosting provider through the acquisition of a license; and

(v) the Internet hosting provider does not retain the right to use the computer program under that license.

(B) The performance by the Internet hosting provider of routine maintenance of the computer program that is recommended or required by the unrelated vendor of the computer program does not affect the application of subparagraph (A) of this paragraph.

Source Note: The provisions of this §3.308 adopted to be effective January 1, 1976; amended to be effective April 11, 1980, 5 TexReg 1288; amended to be effective February 18, 1981, 6 TexReg 507; amended to be effective May 9, 1983, 8 TexReg 1343; amended to be effective October 19, 1984, 9 TexReg 5163; amended

to be effective November 11, 1985, 10 TexReg 4184; amended to be effective December 31, 1987, 12 TexReg 4787; amended to be effective January 22, 2018, 43 TexReg 353

[List of Titles](#)

[Back to List](#)

[HOME](#)

[TEXAS REGISTER](#)

[TEXAS ADMINISTRATIVE CODE](#)

[OPEN MEETINGS](#)