

**ALABAMA DEPARTMENT OF REVENUE - SALES AND USE TAX RULES**  
**Code of Alabama 1975, Sections 40-23-31 and 40-23-83**

**810-6-1-.37. Computer Hardware and Software.**

(1) Computers and related equipment, also known as computer hardware, consist of components and accessories that make up the physical computer assembly. The retail sale of computer hardware is subject to sales or use tax. The rental of computer hardware is subject to rental tax.

(2) The term "computer software" as used in this regulation shall mean a sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both system and application programs and subdivisions, such as assemblers, compilers, routines, generators and utilities.

(3) The term "canned computer software" as used in this regulation shall mean software programs prepared, held, or existing for general or repeated use, including software programs developed in-house and subsequently held or offered for sale or lease. Canned computer software includes all software, except custom software programming, regardless of its function and regardless of whether it is transferred to the purchaser in physical form, via telephone lines, or by another alternative form of transmission.

(4) Canned computer software is tangible personal property; and, on and after March 1, 1997, the retail sale or rental of canned computer software is subject to the sales, use, or rental tax, whether such transaction was affected by a transfer of title, or of possession or of both, or a license to use or consume. Unless specifically stated otherwise, the licensing of canned computer software is considered a retail sale, and not a rental, and is subject to sales or use tax. The measure of tax upon which the sales, use, or rental tax is to be computed is the total amount received from the sale or rental of canned computer software to the customer. Wal-Mart Stores, Inc. v. City of Mobile and County of Mobile, Alabama Supreme Court, decided September 13, 1996, substitute opinion released November 27, 1996.

(5) The term "custom software programming" as used in this regulation shall mean software programs created specifically for one user and prepared to the special order of that user. The term "custom software programming" also includes programs that contain pre-existing routines, utilities, or other program components that are integrated in a unique way to the specifications of a specific purchaser. Custom software programming also includes those services represented by separately stated charges for modifications to a canned computer software program when such modifications are prepared to the special order of the customer. Modification to a canned computer software program to meet the customer's needs is custom software programming only to the extent of the modification. Custom software programming is not subject to tax regardless of the manner or medium of transfer to the customer since the charge for the custom software programming is a charge for professional services and the manner or medium of transfer is considered incidental to the sale of the service.

(6) The provider of custom software programming would owe sales or use tax on the cost of the tangible medium for transferring the custom software programming to the

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**810-6-1-.37. (Continued)**

customer. Such tangible mediums would include tapes, cards, discs, compact discs, and any other tangible personal property used in transferring custom software programming to the customer.

(7) The term "software maintenance agreement/contract" as used in this regulation shall mean contracts sold in connection with the sale or rental of canned software and can include any, all, or a combination of the following: technical consultation (support) services either by telephone or on-site visits, corrections of errors or malfunctions (bugs) in the canned software, provisions for enhancements (software upgrades) to the canned software, revisions to operating manuals for the canned software, and training services. If the maintenance contract is required as a condition of the sale or rental of canned software, the gross sales price or gross rental price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for the canned software. If the maintenance contract is optional to the purchaser of the canned software, then only the portion of the contract fee representing enhancements or upgrades and new operating manuals is subject to tax provided the fees for consultation or support services, error corrections, and training services are separately stated and such separate statement is not used as a means of avoiding imposition of tax upon the actual gross receipts from the furnishing of upgrades or manuals. If these fees are not separately stated, the entire charge for the maintenance contract is subject to tax. If the maintenance contract is optional to the lessee of the canned software, the rental tax will not apply to the gross receipts derived therefrom.

(8) Maintenance contracts sold in connection with custom software programming, whether required or optional, or whether or not separately stated, are not subject to tax. The provider of the custom software programming is the consumer of any tangible personal property used in producing operating manuals and would owe sales or use tax on the cost of these items. (Section 40-23-2(1)) (Adopted July 2, 1975, amended June 12, 1978, readopted through APA effective October 1, 1982, amended January 29, 1990, amended February 21, 1997, amended August 21, 1997)