

THE RETAIL SALES TAX ACT

COMPUTER SOFTWARE AND PROGRAMMING SERVICES

This bulletin explains the application of Retail Sales Tax (RST) to computer programs, custom-developed software and modifications to software.

Section 1- GENERAL INFORMATION

- Prior to March 7, 1998, all computer programs were taxable, including pre-written and custom-developed software.
- Effective March 7, 1998, custom software that is designed and developed to meet the requirements of a specific person, and programming services related to custom software, are exempt from RST.

Please note: All pre-written software continues to be taxable (also referred to as pre-packaged, canned, shrink-wrap or off-the-shelf).

- While modifications to pre-written software are generally taxable, effective March 7, 1998, the charges are exempt if the modifications are developed to meet the requirements of a specific person and are so extensive that the charges for the modifications are greater than the cost of the pre-written software itself.

Section 2 – DEFINITIONS

Software

- Means packaged or prewritten software programs or modifications to such programs, or the right to use such programs or modifications, whether the software is delivered by disk or tape or by electronic or other means, but does not include
 - (a) Modifications made to or of software after March 6, 1998 solely to meet the requirements of a specific person if
 - (i) the purchase price or lease price, as the case may be, of the modifications is separate from that of the unmodified software, and
 - (ii) the purchase price or lease price of the modifications is greater than the purchase price or lease price, as the case may be, of the software in its unmodified form,

Note: Revisions to contents of previous Bulletin (May 2000) have been identified by shading (■)

- (b) software modified after March 6, 1998 solely to meet the requirements of a specific person if
 - (i) the purchase price or lease price, as the case may be, is for the software as modified, and
 - (ii) that purchase price or lease price is more than double what it would have been for the software in its unmodified form, or
- (c) custom software, being
 - (i) software programs developed after March 6, 1998 solely to meet the requirements of a specific person, and
 - (ii) modifications to software referred to in subclause (i) when performed for the person for whom the software was originally developed.

unless the software is a copy of software referred to in clause (a), (b) or (c), or the right to use such software, that is sold or leased to someone other than the specific person for whom the software was originally modified or developed.

- Modification**
- In connection with software, means any change to the software that changes the source code.

Section 3 – TAXABLE SOFTWARE

- Systems software**
- Systems (or operations) software does not qualify for the exemption provided for custom software. System software is fundamental to the operation of the computer and is considered to be an integral part of it. Therefore the tax applies to the systems software in each case where the applicable hardware is subject to tax.

- Application software**
- The following application software is subject to tax when sold or leased:
 - packaged, pre-written, canned or off-the-shelf computer software;
 - pre-written modules (see Section 6, for additional information);
 - all software modifications that are sold to more than one person;
 - custom modifications made to pre-written software for a specific person who purchased or previously owned the software, if the charge for the modifications does not exceed the price paid for the pre-written software;
 - pre-written software that has been modified for a specific purchaser before the purchaser takes title to it, if the price for the modified software is not more than double what the price would have been for the unmodified software;
 - add-on application utilities, such as a spreadsheet template or a macro, sold to more than one person;
 - upgrades to any of the above;
 - the right to use any of the above, including additional licence agreements.

- The RST applies on the above software located in Manitoba whether acquired on tape, disk, transferred electronically or delivered by other means.
- Where a person in Manitoba merely accesses software installed on a server located outside Manitoba, the applicable charges to the person in Manitoba are not subject to RST. However, if the software is downloaded to a Manitoba computer for the person's use, the charges for use of the software are subject to RST.

Software manuals and books

- The customer must pay RST on the total charge for the above software, including charges for documents or manuals designed to facilitate the use of the software, licence fees and royalties. However software books of a type purchased in bookstores, when purchased separately or shown separately on the invoice, are exempt if they contain no advertising. Books sold by software companies, where their name or logo appears throughout the book, do not qualify for exemption as this is considered to be advertising.

Software purchased to make copies for resale

- Normally when a business acquires the right to copy and resell software, the price paid for the software is much greater than the price that would be paid if purchased for their own use. Businesses acquiring software for this purpose are not required to pay sales tax on the purchase price of the software, but must self-assess and remit tax on their regular selling price of one copy of the software. The business is also required to collect tax on the subsequent sales of this software.

Services provided to taxable software

- Services provided to taxable software such as modifying, upgrading, installing, configuring, eradicating viruses, maintaining, repairing, restoring, or providing any other corrective action to software are taxable.

Please note: Configuration of software does not involve modification of software but rather is a process of installing software. Therefore, the charges for installation and configuration of taxable software are taxable.

Please note: The RST applies to these services where a consultant is connected by modem to their customer's equipment and provides these services to software via the modem connection. The tax applies on services to software located in Manitoba even when the consultant providing the services is located outside Manitoba.

Tax exempt software services

- Computer services such as data processing, data back-up, information retrieval, consulting, engineering studies, procurement, staff training and help line support are generally not taxable if they are not provided as a condition of the software/hardware purchase, i.e. the services were optional to the purchaser. The charge for these services must be shown as a separate item on the invoice to be exempt and the supplier must be able to show that the exempt services were not provided as a condition of purchasing other taxable services or software.

- Maintenance, warranty and software support agreements for taxable software**
- Service contracts for maintenance, warranty and other support services in respect of taxable software are subject to RST. Suppliers must collect and remit the tax when billing their customers for the monthly/annual charges under the contract. Also, the supplier must collect tax on any charges the customer pays in addition to the contract, such as a deductible charge.
 - Maintenance, warranty and support services contracts that include both taxable and exempt services are fully taxable unless the charges for exempt services are sufficiently described and shown separately on the sales invoice. The supplier must be able to show that the exempt services were not provided as a condition of purchasing other taxable services or software. That is the purchaser had the option to purchase the exempt services from other suppliers.

Section 4 – CUSTOM SOFTWARE

- Exempt custom software**
- Effective March 7, 1998, custom software that is developed solely to meet the requirements of a specific person is tax exempt.
 - Custom software includes a new and distinct program developed by:
 - writing the program code from scratch;
 - using packaged programming software to write the program code; or
 - using codes from a library of codes developed, maintained and owned by the programmer.
 - Custom software also includes a custom application utility (e.g., a spreadsheet template, a macro or an interface program) that meets the specific requirements of one customer. To qualify for the exemption from tax, the custom application utility must be sold (leased) without the taxable software under which it operates, or the charge for it must be stated separately on the invoice.
 - The programmer must pay tax on materials, software and taxable services consumed in the development of custom software programs.
- Transitional contracts**
- Where custom software contracts were in progress on March 7, 1998, the programming and development services performed before that date are subject to tax. The portion of work completed after March 6, 1998, is eligible for the exemption.
- Additional copies for original owner**
- Tax does not apply to the charge for additional licences or copies of custom software sold (leased) to the same person for whom the custom software was originally developed. Similarly, the person for whom the custom software was developed may make copies of the custom software provided it is for his/her own use and not for sale to another person. For example: If a business that has two or more branches provides a copy to each branch, the custom software will retain its exempt status.
- Additional copies sold to other persons**
- A copy of, or licence to use, custom software is taxable when sold (leased) to someone other than the specific person for whom the software was originally developed. Similarly, installation and other services provided to the software copy purchased by the other person are taxable. The original

copy of the custom software sold to the specific person for whom it was developed retains its status as exempt custom software.

Software developed for an industry

- A software program developed for several customers in one industry does not meet the definition of custom software because it was not developed solely to meet the requirements of a specific person. RST applies to the sale (lease) of that software to all customers.

Installation services etc., of custom software

- The charges for services provided to custom software, such as installation on the customer's computer, maintenance and software support contracts are not subject to tax when the services are provided to the same person for whom the custom software was originally developed. Persons providing these services must pay tax on their costs of materials, software, and taxable services purchased from third parties, that are used to provide the service.

Please note: Services performed after March 6, 1998, in respect of custom software, are exempt even if the custom software was developed before March 7, 1998 and was subject to tax at that time.

Modifications to custom software

- The charges for modifications or upgrades of custom software performed for the person for whom the software was originally developed, are not subject to RST. Persons modifying custom software must pay tax on their cost for materials, software, and taxable services purchased from third parties, used to perform the modifications or upgrades.

Onus to prove custom software status

- Where the person installing or making the modifications/upgrades is not the original programmer of the custom software, the customer must provide a copy of the original invoice or a written statement certifying that the software is custom software, and not subject to tax. The person performing the modifications must retain this documentation to substantiate the allowance of the exemption.

Custom software sold on sale of business

- Where a business is sold to a purchaser as a going concern and custom software is transferred to the purchaser as an asset of the business, the new owner is deemed to be the specific person for whom the software was originally developed. The software retains its identity as custom software and the new owner is not required to pay tax on the purchase, nor on subsequent purchases of services or modifications to the custom software.

Custom software transferred to related corporation

- A transfer (sale) of custom software between a corporation and/or its wholly-owned subsidiary (ies) is not subject to tax. The custom software retains its identity and the transferee is deemed to be the specific person for whom the software was originally developed. For purposes of this exemption a wholly-owned corporation is generally one that at least 95 per cent of its share capital is owned by the parent corporation.

Please note: This exemption does not apply if the seller retains a copy of the custom software for his/her own use.

Custom software sold at the time of incorporation

- Custom software retains its identity and is not subject to tax when it is sold to a corporation at the time of its incorporation by a person who:
 - after the sale owns 95 per cent of the share capital of the purchaser, or

- receives shares in the capital stock of the purchaser equal to the fair value of the custom software as full payment.
- Upon transfer, the purchasing corporation is deemed to be the specific person for whom the software was originally developed and is not required to pay tax on subsequent purchases of services or modifications to the custom software.

Please note: This exemption does not apply where the seller retains a copy of the custom software for his/her own use.

Section 5 – CUSTOM MODIFICATIONS TO TAXABLE SOFTWARE

General exemption

- Effective March 7, 1998 the charges for custom modifications to pre-written software are exempt if the modifications are developed to meet the requirements of a specific person and are so extensive that the charges for the modifications are greater than the cost of the pre-written software itself.

Please note: The exemption applies to the modification charges only. The purchase of pre-written software continues to be taxable as discussed below.

Please note: A custom application utility for pre-written software, written by the programmer from scratch to meet the requirements of a specific person, is custom software under the conditions described in Section 4 - Custom Software.

Custom modifications purchased separately from taxable software

- A customer may purchase and pay the tax on pre-written software, use the software for a while and then have it custom modified at a later date. Alternatively, the customer may purchase pre-written software from one vendor and immediately have another vendor custom modify it. In such situations, modifications performed solely to meet the requirements of a specific person are RST exempt if the purchase (lease) price for the custom modifications is greater than the original price paid for the pre-written software.

For example: A person purchases the pre-written software for \$1,000 and pays tax on the purchase price. The person later hires a programmer to modify the software to meet his/her specific requirements at a cost of \$1,500. In this situation, the purchase price for the modifications (\$1,500) is greater than the purchase price for the unmodified software (\$1,000) and is therefore exempt.

Please note: The programmer modifying the software is required to pay tax on any materials, software, and taxable services purchased from third parties, that he/she uses to modify the software program.

- The programmer must indicate on the invoice for the exempt sale that the charge is for software modifications to meet the customer's specific requirements. The programmer should also obtain documentation from the software owner substantiating the original price of the pre-written software, to verify that the charge for the modifications is greater than the price paid for the unmodified software.

- Where the customer cannot provide supporting documentation to substantiate the purchase price paid for the unmodified software, tax must be collected on the charges for modifications. If the customer later locates the supporting documentation, the customer may apply to the Taxation Division for a refund of the tax paid if the price for the custom modifications exceeds the price for the unmodified pre-written software.

Custom modifications purchased with taxable software

- A customer may purchase (lease) a pre-written software program that has been custom modified to meet his/her specific requirements before taking title to the software. In this case, the total price for the custom modified software is exempt if the total price for the modified software is at least double what the price would have been for the software unmodified.

For example: As a condition of the sale of a pre-written software program that normally sells for \$1,000, the seller modifies the software to meet the specific requirements of the customer. The modified software is sold to that customer for \$2,500. Since the price for the custom modified program is more than double what the price would have been for the software in its unmodified form, the total charge to the customer of \$2,500 is tax exempt.

Please note: In this case the seller is required to pay tax on his/her cost of the pre-written software, other materials and taxable services purchased from third parties, that are used in the development of the custom modified software program.

Transitional contracts March 7, 1998

- Where custom modifications contracts were in progress on March 7, 1998, the programming and development services performed before that date are subject to tax. The portion of work completed after March 6, 1998, is eligible for the exemption if the total contract charges for the modifications are greater than the cost of the pre-written software.

Establishing the purchase price of pre-written software

- For purposes of determining whether modifications to pre-written software qualify for exemption, the purchase (lease) price of the pre-written software is based on the price for the initial licence only, regardless of the number of additional licences the purchaser acquires. On the other hand, the price of any previous taxable modifications (custom or non-custom) does not increase the original purchase price of the pre-written software.

Example 1: A customer pays \$1,000 for the initial licence for pre-written software and \$500 for an additional licence, totaling \$1,500. Custom modifications costing \$1,200 are performed to the software. The modifications are eligible for exemption because the price is more than the price for the initial software licence.

Example 2: A customer purchases a licence for pre-written software for \$1,000. In subsequently separate contracts, modifications costing \$500, \$800 and \$1,100 respectively, were performed to the software. The first two contracts for modifications are subject to tax because the price for these contracts individually are not greater than the price for the initial software licence. However, the \$1,100 modification contract qualifies for the exemption because the price is more than the price for the initial software licence (before any modifications).

Establishing the purchase price of software modifications

In addition to the charges for actually modifying the software, charges for travel time, normal travel expenses, installation and staff training related to the software modifications, form part of the price of the software modifications for purposes of determining whether they are custom modifications and eligibility for the exemption.

For example: The pre-written software in its unmodified form cost \$4,000. The seller of software modifications itemizes the following charges on an invoice; programming modifications - \$3,000; travel time and expenses - \$700; staff training - \$300; installation - \$100. Therefore the total eligible cost of the software modifications is $\$3,000 + \$700 + \$300 + \$100 = \$4,100$. Since the cost of the modifications (\$4,100) exceeds the cost of the pre-written software (\$4,000), the modifications qualify as custom modifications and are tax exempt.

Periodic billings for software modifications

- Where a vendor providing custom modification services to a pre-written software program issues a periodic (e.g. monthly) billing for modifications completed during that period, RST applies as follows:
 - If the contract specifies that the total value of all modifications will be greater than the price of the unmodified software, RST does not apply on the periodic billings. Each billing is considered to be a progress payment of the total contract price for the exempt modifications.
 - If the contract does not specify the total value of the modifications, but specifies what the software must be able to do after the modifications (i.e. modifications are identified, but not the cost), the tax applies on each periodic billing until the cumulative billings for modifications performed under the contract exceed the price of the unmodified software. Once it is established that the custom modifications for the contract are greater than the price of the unmodified software, subsequent billings are tax exempt and the vendor may refund to the purchaser the tax collected to date .
 - If periodic billings are issued for modifications that are not covered by a contract, each billing will be treated as a separate contract.

Modification costs are not cumulative

- Where taxable software is custom modified several times and the modification charges for each separate contract are less than the original cost of the software, the charges for modifications in respect of each contract are taxable, even if cumulatively the charges for modifications are eventually greater than the cost of the software.
- Where the charges for custom modifications of software in a single contract exceed the original cost of the software, the charges for the modifications are exempt and the software is treated like custom software for future tax application.

Services after custom software status established

- Once pre-written software is treated like custom software as explained in the previous paragraph, the tax-exempt status of the software is established. Subsequent purchases of the following items regardless of the cost are not subject to tax when provided to the person for whom the tax-exempt status of the software was established:

- Additional copies of the custom modified software.
- Additional licences to use the custom modified software.
- An upgrade of the custom modified software that is upgraded solely to meet the requirements of the person for whom the software was originally modified.
- Further modifications to the custom modified software performed solely to meet the requirements of the person for whom the software was originally modified. Such modifications are exempt regardless of the price for the subsequent modifications.
- Charges to install the software on the customer's equipment, or to repair and maintain the software.
- Maintenance and support agreements for the custom modified software.

Please note: Persons providing the above items are required to pay tax on materials, software, and taxable services purchased from third parties, that are consumed to provide these items, but are not required to collect tax on the charge to the customer.

- Where the person providing further modifications or maintenance to such software is not the programmer who provided the exempt custom modifications, the customer must provide a written statement certifying that the software has received exempt custom modifications. The person providing the maintenance must retain this documentation to substantiate the non-collection of tax on that sale.
- Copies and upgrades of the custom modified software, and licences to use the software, sold (leased) to any other person are subject to tax. In this case services and service contracts provided to that other person are subject to tax as outlined for taxable software in Section 3. The custom modified software sold to the specific person for whom it was developed, retains its exempt status.

Section 6 – COMPUTER SOFTWARE PRODUCED FROM PRE - WRITTEN MODULES

General types of software modules

- Many software packages consist of several pre-written modules. In some instances, each module may be capable of operating as stand-alone software and an interfacing program is not required for the modules to work together. In other cases, the modules require a main shell program in order for them to interface with each other.
- Modules may sometimes be purchased separately and the purchaser can choose each module to construct a package. In other cases, a particular module is only available in sets of pre-written modules sold as a single software package, where the purchaser selects the desired modules as part of the installation. The selection of the modules does not involve writing or assembling program code, but is only the execution of options already built into the program.

Tax application on software packages involving modules

RST applies to computer software produced from pre-written modules as follows:

- Computer software consisting entirely of pre-written modules and pre-written interface programs are taxable.
- When separate custom software is written to enable the pre-written modules to operate together (interface programs), but the modules themselves are not modified, tax applies as follows:
 - If there is a separate charge for the custom software, tax applies only to the price for the pre-written modules but not to the separate charge for the custom software.
 - If there is a single charge for the pre-written modules and the custom interface software, RST applies to the total charge.
- When one or more modules are modified and the modified modules are sold to more than one customer, the charge for the total software package including the modifications is subject to tax, regardless of the value of the modifications.
- When one or more pre-written modules included in a software package are custom-modified to meet the requirements of a specific person, RST applies as indicated in the following situations. For purposes of determining if the modifications are exempt, the purchase price of the pre-written software package is the total price of all the modules and other pre-written software that make up the package.
 - If the person purchases the software package separately from the custom modifications, the charge for the custom modifications is exempt if it is greater than the price paid for the pre-written software package.
 - If the person purchases a pre-written software package, and before taking title to it has custom modifications made to several modules as a condition of the purchase, the total charge for the modified software package is exempt if the charge is at least double what the price of the pre-written software package would have been before it was modified.

Please note: The programmer is required to pay tax on any materials, pre-written modules or software, and taxable services purchased from third parties, that are used in the development of the custom modified software package.
 - The charges for software modifications that do not meet the above situations are taxable.
- Once modifications to pre-written modules qualify for the tax exemption, the tax-exempt status of the modules is established and it is treated like custom software for future tax application. Subsequent purchases of modifications, upgrades and other services are not subject to tax when provided to the person for whom the tax-exempt status of the software was established.

Installation charges

- Where a taxable software package consisting of a pre-written set of modules is installed on a purchaser's computer, tax applies to the installation or configuring charges, whether or not these charges are separately stated.

Please note: For purposes of taxable software, configuration of software is considered to be part of installing software and subject to tax.

- If pre-written modules in a software package are modified and the charge for the modifications or the charge for the modified software package is RST exempt, the charge for the installation or configuration of that software package is also exempt.

FURTHER INFORMATION

This bulletin is intended as a guideline and is not all-inclusive. For the specific wording of the law, please refer to the Act and Regulation stated below. Further information may be obtained from:

Winnipeg Office

Manitoba Finance
Taxation Division
101 - 401 York Avenue
Winnipeg, Manitoba R3C 0P8
Telephone (204) 945-5603
Manitoba Toll Free 1-800-782-0318
Fax (204) 948-2087
E-mail: MBTax@gov.mb.ca
Web Site: www.gov.mb.ca/finance/taxation

Westman Regional Office

Manitoba Finance
Taxation Division
349, 340 - 9th Street
Brandon, Manitoba R7A 6C2
Telephone (204) 726-6153
Manitoba Toll Free 1-800-275-9290
Fax (204) 726-6763

**Principal
References In
Legislation:**

The Retail Sales Tax Act of Manitoba (C.C.S.M. c. R130), Sections 1(1) definition of "modification", "software" and "tangible personal property", 1(6), 1(7), and 1(8);
Manitoba Regulation (75/88R).