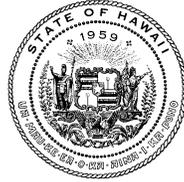


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TAX INFORMATION RELEASE NO. 2021-06

RE: General Excise Tax Treatment of Software

The purpose of this Tax Information Release (TIR) is to clarify and explain the Department of Taxation's (Department's) position on the general excise tax (GET) treatment of sales of software.

Canned or Prewritten Software

The Department considers the sale of prewritten or canned software to be the sale of tangible personal property (TPP), regardless of whether the software is contained on a tangible medium, such as a disc, or transferred electronically.

The Department recognizes that software, even software contained on a tangible medium, is often offered as a license to use the software, rather than a complete sale of software itself where the purchaser has no restrictions on its use (reproduction, resale, etc.). Therefore, the sale of a license to use prewritten or canned software will also be treated as the sale of TPP.

Custom Software

The Department considers made to order or custom software to be the provision of services. A taxpayer producing custom software for a licensed seller is providing services to the licensed seller, regardless of whether the custom software is transferred to the licensed seller through a sale or as a license to use the custom software.

Appropriate Tax Rate

Generally, sales of TPP are subject to GET at the retail rate of 4 percent.¹ However, a wholesaler of TPP is subject to GET at the wholesale rate of 0.5 percent. A wholesaler of TPP is a person who sells TPP to a licensed seller for purposes of resale.²

As stated above, the Department considers prewritten or canned software to be TPP, therefore, if prewritten or canned software is sold or licensed by a taxpayer to a licensed seller for subsequent resale or licensing, the transaction may qualify for the wholesale rate. Please see

¹ Hawaii Revised Statutes (HRS) §237-13(2)(A).

² HRS §237-13(2)(A).

HRS section 237-4 for the requirements.

Sales of services are generally subject to GET at the retail rate of 4 percent.³ However, a wholesaler of services is subject to GET at the wholesale rate of 0.5 percent.⁴ To be eligible for the wholesale rate for sale of services, all the requirements of HRS section 237-4(a)(10) must be met.

If all applicable requirements for wholesale treatment are met, the licensed seller may issue a resale certificate to the vendor. Resale certificates for TPP and services are available on the Department's website at tax.hawaii.gov/forms.

Marketplace Facilitators

If software is sold or licensed through a "marketplace facilitator," the marketplace facilitator is deemed to be the retail seller and therefore subject to GET at the retail rate of 4 percent.⁵ The marketplace seller, on whose behalf the sale or licensing of the software is made, is deemed to have made a sale at wholesale pursuant to HRS section 237-4. For more information on marketplace facilitators, see TIR No. 2019-03.

If you have any questions, you may contact the Rules Office by email at tax.rules.office@hawaii.gov, or call (808) 587-1530.

ISAAC W. CHOY
Director of Taxation

³ HRS §237-13(6)(A).

⁴ HRS §237-13(6)(A).

⁵ HRS §237-4.5(a).