



**May 31, 2012**  
**Pennsylvania Sales and Tax**  
**No. SUT-12-001**  
**Cloud Computing**

ISSUE

What are the sales and use tax consequences of accessing taxable canned software on remote servers, also known as "cloud computing."

CONCLUSION

Accessing taxable canned software is taxable when the user is located in Pennsylvania.

FACTS

According to your letter, the terms, "cloud computing" and "digital content" refer to a variety of software products and services that use a server infrastructure and are accessed and used by end users using computer devices. In the conduct of its business, Taxpayer uses cloud computing in two distinct ways. First, Taxpayer purchases and installs software on servers that can be accessed by Taxpayer's employees. Taxpayer's employees can access their office computers and can perform work-related tasks from remote locations, within and outside of Pennsylvania. Taxpayer pays for the software and employees can access the software through the cloud free of charge. Second, Taxpayer installs software on servers that can be accessed by Taxpayer's customers. In order to access the software, Taxpayer's customers either pay a subscription fee to Taxpayer or pay Taxpayer on a per-use basis. Both Taxpayer's employees and customers may collectively be referred to as "end users" of the licenses to use the software.

DISCUSSION

The Tax Reform Code of 1971, as amended, provides for the imposition of a sales and use tax on the retail sale of tangible personal property and certain services. 72 P.S. § 7202 (a). For sales and use tax purposes, the sale, including a license to use, canned computer software is subject to tax, even if delivered electronically. See *Dechert, LLP v. Commonwealth*, 998 A.2d 575 (Pa. 2010); *Graham Packaging Co. v. Commonwealth*, 882 A.2d 1076 (Cmwlth. Ct. 2005).

In light of recent case law and technological advances, the Department concludes that because computer software is tangible personal property, the charge for electronically accessing taxable software is taxable. In accessing taxable software the user is exercising a license to use the software, as well as control or power over the software, at the user's location. 72 P.S. § 7201(o)(1).

In the case of taxable canned software accessed remotely that is sold to Taxpayer's customers, Taxpayer is required to collect sales tax from customers when the user is located in Pennsylvania. Likewise, in the case of Taxpayer's employees who use the taxable software purchased by Taxpayer, the software is subject to use tax in Pennsylvania when the software is used by employees in Pennsylvania. If the billing address for canned software accessed remotely is a Pennsylvania address, then the presumption is that all users are located in the Commonwealth. In order to rebut this presumption, the purchaser would need to complete an exemption certificate (REV-1220). On Line No. 7 of the exemption certificate, the purchaser must state the percentage of users of the software who are located in Pennsylvania.

The sale and use of software that otherwise would be subject to tax is not subject to sales tax if the end user of the software is located outside of the Commonwealth, even if the cloud server that hosts the software is located in Pennsylvania. However, if the end user is located in Pennsylvania, tax is due



purchase of software to be located in Pennsylvania when tax will be collected on the use of the software in Pennsylvania.