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Pennsylvania Sales and Use Tax
No. SUT-06-014
Computer Consulting and Programming Services

ISSUE

Does the Taxpayer provide taxable help supply services or render nontaxable computer programming services when it supplies employees that perform custom software programming and system design services to the specifications of customers?

CONCLUSION

The Taxpayer renders nontaxable computer programming services.

FACTS

The Taxpayer is an out-of-state corporation engaged in the business of providing consultants, who perform a variety of custom software programming, systems design, and database management services to its customers. The Taxpayer's employees are assigned, based on the specific skills and expertise they possess, to design, develop, and deliver a specific computer system or database that meets the customer's specifications. The Taxpayer's employees perform these computer services at the customer's place of business using the customer's equipment and facilities. The customer controls only the location and time of the work to be accomplished and does not supervise the Taxpayer's employees.

DISCUSSION

Pennsylvania law imposes a sales tax of six percent of the purchase price on each separate sale at retail of tangible personal property and certain enumerated services in Pennsylvania. 72 P.S. § 7202(a). The term "sale at retail" is defined to include the rendition for a consideration of a help supply service, which is one of the enumerated services. 72 P.S. § 7201(k)(15). The term "help supply services" means "[p]roviding temporary or continuing help where the help supplied is on the payroll of the supplying person or entity, but is under the supervision of the individual or business to which help is furnished." 72 P.S. § 7201(cc).

A transaction involving the sale of help supply services requires three parties: a vendor, an employee of the vendor, and a customer. The vendor provides the employee to the customer to perform work under the direction and supervision of the customer. A determination of whether a certain transaction is the sale of taxable help supply services may also depend on whether the vendor warrants the work of its employee. The vendor's billing practice, for example, hourly or on a fixed price basis, or the level of professional or technical expertise of the employee alone does not control a determination that the transaction is taxable.

Additionally, if the vendor's responsibility is to provide an employee capable of performing a task or duty and there is no specified deliverable or finished product, the transaction is a taxable help supply service. In general, if the vendor is liable for something more than the fitness of the employee to perform a particular task or duty and is responsible for the employee's failure to deliver a certain work product, the transaction is not a taxable help supply service. The Taxpayer's engagement documents indicate that the Taxpayer's employees are not under the supervision of its customers. The customer's communication of requirements for the finished product to the Taxpayer and its employees is not supervision by the customer, a requirement of a help supply service. Instead, the Taxpayer renders a variety of nontaxable computer programming and consulting services.