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## MA DOR Issues FAQs Regarding New Sales Tax on Computer Services

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On July 31, 2013, the Massachusetts Department of Revenue published responses to some frequently asked questions (FAQs) it received after the publication of Technical Information Release (TIR) 13-10 regarding the new sales tax applicable to computer system design services and the modification, integration, enhancement, installation or configuration of prewritten software. Please see our prior [Client Alert](#) on TIR 13-10.

### **Custom Software**

The FAQs clarify that, in general, custom software (that is not based on prewritten software) is not subject to sales tax under the new law. If software that is licensed, sold, or otherwise made available to more than one user (generally, prewritten software) is modified for the use of a specific customer (which might otherwise be considered customization), such modification is subject to the new sales tax. Prewritten software does not include proprietary code owned by the seller of the modifications if the proprietary code is not separately licensed to the customer. Therefore, custom application software (including custom software that incorporates such proprietary code) that is designed to run on a prewritten operating system is treated as custom software, which is not subject to the tax, and not as a modification of the prewritten operating system software. However, if a seller customizes Open Source (free) software and sells it to one or more customers to be used on any electronic device, that customized software is subject to tax.

### **Website Design**

The FAQs also address whether website design is a taxable service. If the website designer is configuring or modifying Open Source code or other prewritten software for the needs of a customer, the designer's charges to that customer are subject to the sales tax. If the website designer is creating custom software for its customer (that is not based on other prewritten software), then the charges are not subject to the sales tax.

### **Computer System Design Services**

The FAQs generally do not provide additional information regarding the scope of computer system design services. The FAQs do provide that if a computer system is designed but not actually built, so software is never actually integrated with hardware, the sales tax does not apply to the design or consulting services. The tax only applies to design or consulting services that result in a sale of a computer system that integrates computer hardware, software or communication technologies. The FAQs also indicate that designing and implementing of a local area network (LAN) and adding functionality and/or workstations to a LAN fall within the definition of computer system design services.

## Non-Taxable Services

The FAQs also provide that, in general, the following services are not taxable:

- troubleshooting computer services;
- technical support and training;
- website hosting;
- data storage;
- disaster recovery and backup services; and
- data conversion and data migration.

The FAQs leave many questions unanswered, such as how a purchaser is to determine whether certain services are subject to the use tax and questions regarding sourcing. The DOR has indicated that it intends to update these FAQs as additional inquiries are received. [View a copy of the FAQs.](#)

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