
Massachusetts Enacts Sales Tax on Computer Services

2013-07-30

On July 24, 2013, the Massachusetts legislature overruled the veto of Governor Deval Patrick in enacting a transportation bill that includes several tax provisions designed to generate revenue for the transportation projects authorized by the legislation. One of the most significant provisions is the expansion of the definition of taxable services, which previously included only telecommunications services, to cover “computer system design services and the modification, integration, enhancement, installation or configuration of standardized software” (collectively “computer services”).

“Computer system design services” are defined as the “planning, consulting or designing of computer systems that integrate computer hardware, software or communication technologies and are provided by a vendor or a third party.” This definition, along with the reference to the modification of standardized software, encompasses the sale of custom software, which will now be subject to the sales tax. Previously, only prewritten or standardized software was subject to the Massachusetts sales tax. Thus, Massachusetts becomes one of only a few states that taxes computer services.

Industry groups have been concerned about the impact of this tax provision on Massachusetts businesses. The Massachusetts Taxpayers Foundation has stated that the tax on computer services “strikes at the heart of the Massachusetts economy,” indicating that in its view “virtually every industry in the state will be affected by this tax – ranging from retail to life sciences to health care to finance.” See Massachusetts Taxpayers Foundation News Release, June 26, 2013.

On July 25, 2013, the Massachusetts Department of Revenue issued Technical Information Release (TIR) 13-10, containing initial guidance on this statutory change.

In general, the TIR:

- Describes the scope of the legislation:
 - Taxes computer system design services.
 - Taxes software services that modify, enable, or adapt prewritten software to meet the business or technical requirements of a particular purchaser and to operate on the

- purchaser's computer systems, regardless of how those services are described or billed to the customer.
- Does not include personal services such as (i) consulting and evaluation services with respect to existing computer systems to identify deficiencies and needs and (ii) services to prepare a business to use modified software, such as training.
- Provides sourcing rules—when the sale or use of computer services is taxable in Massachusetts:
- Vendors required to collect Massachusetts sales tax must collect the tax when the sale of services is sourced to the purchaser in Massachusetts, applying the following rules in descending order:
 - Sourced to vendor's location when received by purchaser at that location.
 - Sourced where service is received based upon purchaser's delivery instructions.
 - If purchaser does not specify delivery location, sourced based upon information known to vendor.
 - If delivery location and purchaser's location unknown, sourced to vendor's location.
 - The vendor need not collect the tax if the computer services are used by the purchaser in more than one jurisdiction and if the purchaser furnishes a multiple points of use certificate in which case the purchaser must pay use taxes based upon the use locations. If a vendor is otherwise not required, or fails, to collect the sales tax, the purchaser must also pay use taxes based upon the use locations.
- Provides transitional rules for existing contracts and information regarding the effective date:
- Effective for transactions on or after July 31, 2013. Contracts for computer services entered into before July 31, 2013 are not taxable, except to the extent payments under the contract are invoiced, billed or due after July 31, 2013, but only to the extent such payments relate to services performed on or after July 31, 2013.
 - The Department of Revenue has directed that transactions for July 31, 2013 shall be reported and paid together with August 2013 transactions by the September 20, 2013 due date.

Authors

Richard W. Giuliani

RETIRED PARTNER

☎ +1 617 526 6000



Julie Hogan Rodgers

PARTNER

Vice Chair, Tax Practice

✉ julie.rodgers@wilmerhale.com

☎ +1 617 526 6543