

CR 85-119

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

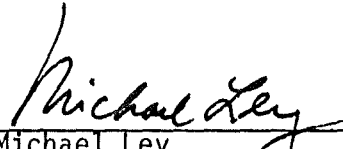
RECEIVED
DEC 13 1985
9:30 am
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Michael Ley, Secretary of the Department of Revenue and custodian of the official records of said department do hereby certify that the annexed Order relating to Clearinghouse Rule No. 85-119 was duly approved and adopted by this department on December 12, 1985.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 12th day of December, 1985.



Michael Ley
Secretary of Revenue

ML:bet
430710

3-1-86

ORDER OF THE DEPARTMENT OF REVENUE
ADOPTING RULE TAX 11.71, COMPUTER INDUSTRY

To create s. Tax 11.71 relating to the sales and use tax status of purchases and sales made by persons in the computer industry. This includes persons who process a client's data. It also includes persons who sell, lease or rent equipment used in data processing, or provide prewritten or custom programs to customers.

Analysis by the Department of Revenue

This rule interprets the Wisconsin sales and use tax statutes as they apply to the computer industry. The rule codifies the Department of Revenue's interpretations and incorporates the Wisconsin Supreme Court's decision in Janesville Data Center, Inc. v. Department of Revenue (1978) 84 Wis. 2d 341.

Subsection (1) defines the terms used in the computer industry which are used in this rule. Subsection (2) describes the types of receipts which are subject to the sales/use tax whether it relates to sales of hardware or software. Subsection (3) describes the most common types of nontaxable receipts, which includes processing a client's data, providing custom programs and time-sharing.

Pursuant to the authority vested in the Department of Revenue by section 227.014, Stats. the Department of Revenue hereby adopts a rule interpreting sections 77.51(4)(h) and (j) and 77.52(1) and (2)(a)10, Stats., as follows:

SECTION 1. Tax 11.71 is created to read:

Tax 11.71 COMPUTER INDUSTRY. (ss. 77.51(4)(h) and (j), and 77.52(1) and (2)(a)10, Stats.) (1) DEFINITION OF TERMS. In this section:

(a) "Application" means the specific job performance by an automatic data processing installation.

(b) "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment as well as punched card tabulating machines. It does not include tape-controlled automatic drilling, milling or other manufacturing machinery or equipment.

(c) "Basic operational programs", commonly referred to as "systems software", means the programs that perform overall control and direction of the computer system and permit it to do the functions basic to the operation of a computer,

and permit it to execute the instructions contained in utility software and applications software programs. Basic operational programs are considered an integral part of the computer hardware when these internal codes are not accessible to or modifiable by the user.

(d) "Coding" means the list, in computer code, of the successive computer instructions for successive computer operations for solving a specific problem.

(e) "Custom programs" mean utility and application software which accommodate the special processing needs of the customer. The determination of whether a program is a custom program shall be based upon all the facts and circumstances, including the following:

1. The extent to which the vendor or independent consultant engages in significant presale consultation and analysis of the user's requirements and system.

2. Whether the program is loaded into the customer's computer by the vendor and the extent to which the installed program must be tested against the program's specifications.

3. The extent to which the use of the software requires substantial training of the customer's personnel and substantial written documentation.

4. The extent to which enhancement and maintenance support by the vendor is needed for continued usefulness.

5. There is a rebuttable presumption that any program with a cost of \$10,000 or less is not a custom program.

6. Custom programs do not include basic operational programs.

7. If an existing program is selected for modification, there must be a significant modification of that program by the vendor so that it may be used in the customer's specific hardware and software environment.

(f) "Data processing" means the recording and handling of information by means of mechanical or electronic equipment, commonly referred to as automatic data processing.

(g) "Enhancement" means modifications, upgrades, improvements or changes to existing programs by persons other than the purchaser of the program.

(h) "Input" means the information or data transferred, or to be transferred, from external storage media including punched cards, punched paper tape and magnetic media into the internal storage of the computer.

(i) "Keypunching" means recording information in cards, paper tapes, or magnetic tapes, disc or drum by punching holes or otherwise entering information in the cards, tapes, discs or drums, or recording data on any media to represent letters, digits and special characters. Keypunching includes the necessary preliminary encoding or marking of the source documents.

(j) "Keystroke verifying" means the use of a machine known as a punched card verifier or tape transcriber, which has a keyboard, to ensure that information punched in a punch card or transcribed on a tape during the keypunching operation has been punched properly.

(k) "Prewritten programs", often referred to as "canned programs", means programs prepared, held or existing for general use normally for more than one customer, including programs developed for in-house use or custom program use which are subsequently held or offered for sale or lease.

(l) "Processing a client's data" means the developing of original information from raw data furnished by a client. Automatic data processing operations which develop original information include summarizing, computing, extracting, sorting, sequencing, or the updating of a continuous file of information maintained for a client by a service bureau.

(m) "Program" means the complete plan for the solution of a problem, i.e., the complete sequence of automatic data processing equipment instructions necessary to solve a specific problem. It includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs. For purposes of this section a program is either a prewritten or custom program.

(n) "Program Maintenance", in addition to other maintenance services, includes telephone support services to discuss and solve problems.

(o) "Reformatting of data" means the rearranging of data by mechanical or electronic equipment.

(p) "Service bureau" means a business rendering automatic data processing services.

(q) "Source document" means a document from which basic data are extracted, such as sales invoice.

(2) TAXABLE RECEIPTS. The following transactions involving automatic data processing equipment, programs, output and services are taxable:

(a) The retail sale, lease or rental of new or used automatic data processing equipment and charges for the installation, service and maintenance of this equipment.

1. In this subsection, lease includes a contract by which a lessee, for a consideration, obtains the full or partial use of equipment if the lessee's employes are located on the premises where the equipment is located or operate the equipment. A lease does not include obtaining remote access to equipment by telephone or other means when that person's employes are not located on the premises where the equipment is located and they do not operate the equipment or control its operations.

2. Subleasing receipts are taxable without any deduction or credit for sales or use tax paid by the original lessee to the lessor if the original lessee uses the equipment in addition to subleasing it. If the original lessee uses the equipment solely for lease or rental to others, the lessor's charge to the original lessee is exempt as a purchase for resale.

(b) The retail sale, lease, rental or license to use prewritten programs and basic operational programs, including the maintenance and enhancement of those programs, whether transferred in a machine readable form such as cards,

tapes or discs, or transferred in any other manner to the lessee or purchaser such as by telecommunications, or written instructions on coding sheets. The tax applies to the total charge for these programs, including:

1. The consideration received for the temporary transfer of possession of a prewritten or basic operational program for the purpose of direct use or to be recorded by the customer.

2. The consideration received for a program in the form of license fees or royalty payments, present or future, whether for a minimum use or for extended periods.

3. The consideration received for designing, producing, implementing, testing or installing the program.

(c) The sale of training materials, such as books and manuals furnished to trainees for a specific charge. However, training services are not taxable.

(d) The charge for additional copies of records, reports or tabulations, including copies produced by means of photocopying, multi-lithing or by other means. "Additional copies" means all the copies in excess of copies produced on multipart carbon paper simultaneous with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program so that a program is run continuously, by using different programs to produce the same output product, or by other means.

(e) The sale of mailing lists as set forth in s. Tax 11.82, including listings in the form of mailing labels produced as result of a computer run. However, the tax does not apply to the charge for addressing material to be mailed with names and addresses furnished by a customer, or maintained by a service bureau for the customer, by the use of automatic data processing equipment.

(3) NONTAXABLE COMPUTER AND DATA PROCESSING SERVICES. The gross receipts from the following computer or data processing services are not taxable:

(a) Processing a client's data.

Note: 1) A contract to process a client's data by the use of a computer program or through an electrical accounting machine programmed by a wired plugboard will usually include receiving the client's source documents, recording data in machine readable form such as in punch cards or on magnetic media, making corrections, rearranging or creating new information as the result of the processing and then providing tabulated listings or recording output on other media. This service is not taxable, even though the total charge is broken down into specific charges for each step.

2) If a client furnishes data and computer programs for processing the data and the processing is under the direction and control of the person providing the service, the processing service is not taxable, even though charges for the service may be based on computer time. The true object of this arrangement is considered to be a service, even though some tangible personal property may be incidentally transferred to the client.

(b) Providing custom programs.

(c) Providing program technical support, error correction services and maintenance and enhancement to custom programs.

(d) Providing time-sharing services which permit persons at different locations to access the same computer through remote access by telephone lines, microwave or other means. Nontaxable time-sharing exists when a person or that person's employes, who have access to the equipment, are not located on the premises where the equipment is located and do not operate the equipment or control its operation.

(e) Miscellaneous services which are not part of the sale of a taxable program including:

1. Designing and implementing computer systems including determining equipment and personnel required and how they will be utilized.
2. Designing storage and data retrieval systems including determining what data communications and high-speed input-output terminals are required.
3. Consulting services including study of all or part of a data processing system.
4. Feasibility studies including studies to determine what benefits would be derived if procedures were automated.
5. Evaluation of bids including studies to determine which proposal for computer equipment would be most beneficial.

(f) Key punching and keystroke verifying services, including:

1. Key punching only, key punching and keystroke verification, or key punching and providing a proof list or verification data or both. Charges for these services are not taxable, whether the cards or tapes are furnished by the customer or by a service bureau.
2. Recording data from source documents directly on magnetic tape, off-line. This operation may include keystroke verifying or proof listing of data or both and is comparable to the punch card operation.
3. Imprinting characters on a document to be used as the input medium in an optical character recognition system, whether paper tape or other media are used in the operation.
4. Reformatting of data.

NOTE: The interpretations in s. Tax 11.71 are effective under the general sales and use tax law on and after September 1, 1969 unless otherwise noted in the rule. However, computer and data processing services were taxable under s. 77.52(2)(a)13, Stats., Laws of 1977, from August 1, 1977 through June 30, 1978.

In Janesville Data Center, Inc. v. Department of Revenue (1978), 84 Wis. 2d 341, the Wisconsin Supreme Court held that the transfer of customer data onto

tangible personal property and the verification of customer data is not subject to the sales and use tax as a transfer of tangible personal property or a taxable service.

The rule contained in this order shall take effect as provided by s. 227.026(1)(intro.), Wis. Stats.

DEPARTMENT OF REVENUE

Dated:

December 12, 1985

By:

Michael Ley

Michael Ley
Secretary of Revenue



State of Wisconsin

DEPARTMENT OF REVENUE

OFFICE LOCATED AT
125 SOUTH WEBSTER STREET

MAILING ADDRESS
POST OFFICE BOX 8933
MADISON, WISCONSIN 53708

December 12, 1985

RECEIVED

DEC 13 1985

Revisor of Statutes
Bureau

Orlan L. Prestegard
Revisor of Statutes
30 West Mifflin Street, Suite 904
Madison, Wisconsin 53702

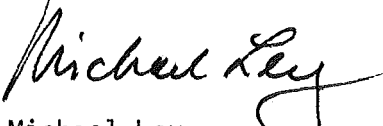
Re: Clearinghouse Rule 85-119

Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue creating sales/use tax rule 11.71, "Computer industry."

These materials are filed with you pursuant to s. 227.023(1), Wis. Stats.

Sincerely,


Michael Ley
Secretary of Revenue

ML:bet
Enclosure
430810

cc: Douglas J. LaFollette, Secretary of State
Prentice Hall, Inc.
Commerce Clearinghouse, Inc.