



Tax Tidbit: Change in Law Regarding Taxability of Canned Software in Missouri

By David Belpedio, Partner, State and Local Tax
December, 2010

The next time you download software products off the Internet or stroll into a big box store to buy software, think about the tax implications to your business.

"Sales tax laws throughout the United States are difficult, to say the least. But the rules regarding software take the issue to a whole new level," says **David Belpedio**, Partner, State and Local Tax department.

A new ruling in Missouri has recently changed the taxability of canned software.

What is Canned vs. Custom Software?

The first distinction in Missouri is between canned and custom software. Custom software is exempt from sales tax, while canned software is generally taxable. That begs the question: *What is the difference?*

Custom software is defined as "programs developed to the special order of a customer. The real object sought by a purchaser...is the service of the seller and not the property produced by the service of the seller." So, software that is written from scratch, to your specifications, is clearly custom software.

Canned software is "standardized programs purchased 'off the shelf' or...programs of general application developed for sale to and use by many different customers with little or no modifications." Most popular software programs are canned software.

A new ruling says that when companies or individuals purchase canned software in the State of Missouri who have it delivered to them in a tangible medium (on a CD or flash drive), and if the title to the tangible medium stays with the seller and the seller takes the CD or flash drive with them when they leave the business, then the purchase is no longer subject to sales tax. **If you have a vendor who loads software onto your system and takes the CD or flash drive with them, it was taxable. Now it is *not* taxable.**