

## **Sales and Use Taxation of Computer Software and Related Services**

States have become aggressive in recent years in taxing sales and services related to computer software. States have been particularly focused on taxing consulting and training services. The primary focus of this article will be the sales and use tax on such services as applied in Nebraska.

### **Software Trainers**

Sales and use tax generally applies to the sale of goods and various services. One such taxable service in Nebraska is computer software training; however the Nebraska Administrative Code specifies that computer software training is taxable only when the training services are provided by the retailer of software. If training services are provided by a company that does not sell software, the training is not taxable. C.

### **Temporary Computer Consultants**

A significant area of focus in the sales tax realm the past several years has been on the services of temporary consultants. Nebraska (and many other states) has taken the position that if the services of a consultant result in software, the services of the consultant are taxable. There is an exception if it can be shown that the service is simply the provision of a temporary employee.

Nebraska has established a safe harbor rule to establish a distinction between when the services of a temporary consultant result in a transfer of software and when such services are simply services of a temporary employee. Any company using temporary employees for computer services that do not result in transfer of software should have a written agreement complying with the following to ensure that the services will not be subject to sales or use tax:

1. A provision establishing that the transaction is only to obtain services of a competent, temporary employee who will be under the control of the company as to the manner of performance and the working conditions.
2. Neither the provider of the employee nor the temporary employee shall have any liability for the failure of the software to perform.
3. Any software produced belongs to the company paying for the services of a temporary employee, and the company has full rights and control regarding future use of any and all copies of the software.

Companies hiring temporary employees to provide services related to computers should also review carefully the language used in contracts and related work orders. Terms such as "programming" should only be used when that is the specific service that is going to be provided. Design language to clarify the nature and type of services to avoid definitions that will be deemed the provision of software.