

Exhibit B

MDOR Notice re Proposed Amendment to Miss. Admin. Code 35.IV.5.06, September 24, 2021

Mississippi Secretary of State
700 North Street P. O. Box 136, Jackson, MS 39205-0136

ADMINISTRATIVE PROCEDURES NOTICE FILING

AGENCY NAME Mississippi Department of Revenue		CONTACT PERSON Sam Portera, CPA	TELEPHONE NUMBER 601-923-7317	
ADDRESS PO Box 1033		CITY Jackson	STATE MS	ZIP 39215
EMAIL sam.portera@dor.ms.gov	SUBMIT DATE 9/24/21	Name or number of rule(s): Title 35, Part IV, Subpart 5, Chapter 06 Computer Equipment, Software, and Services		

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: This rule was amended to clarify the tax treatment of computer software sales and services when delivered through cloud computing. Relevant definitions were added. The definition of "computer program" was deleted and included as part of "computer software". Paragraph 101(2)(c) was added from Miss. Code Ann. Section 27-65-101(ii). The last sentence in new paragraph 301 was deleted. Other minor changes were made.

Specific legal authority authorizing the promulgation of rule: Miss. Code Ann. Section 27-65-93, "(1) The commissioner shall, from time to time, promulgate rules and regulations, not inconsistent with the provisions of the sales tax law, for making returns and for the ascertainment, assessment and collection of the tax imposed by the sales tax law as he may deem necessary to enforce its provisions."

List all rules repealed, amended, or suspended by the proposed rule: Miss. Admin Code Title 35.IV.5.06 Computer Equipment, Software and Services.

ORAL PROCEEDING:

- An oral proceeding is scheduled for this rule on Date: Time: Place:
- Presently, an oral proceeding is not scheduled on this rule.

If an oral proceeding is not scheduled, an oral proceeding must be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) or more persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address, email address, and telephone number of the person(s) making the request; and, if you are an agent or attorney, the name, address, email address, and telephone number of the party or parties you represent. At any time within the twenty-five (25) day public comment period, written submissions including arguments, data, and views on the proposed rule/amendment/repeal may be submitted to the filing agency.

ECONOMIC IMPACT STATEMENT:

- Economic impact statement not required for this rule. Concise summary of economic impact statement attached.

TEMPORARY RULES	PROPOSED ACTION ON RULES	FINAL ACTION ON RULES
<input type="checkbox"/> Original filing <input type="checkbox"/> Renewal of effectiveness To be in effect in _____ days Effective date: <input type="checkbox"/> Immediately upon filing <input type="checkbox"/> Other (specify): _____	Action proposed: <input type="checkbox"/> New rule(s) <input checked="" type="checkbox"/> Amendment to existing rule(s) <input type="checkbox"/> Repeal of existing rule(s) <input type="checkbox"/> Adoption by reference Proposed final effective date: <input checked="" type="checkbox"/> 30 days after filing <input type="checkbox"/> Other (specify): _____	Date Proposed Rule Filed: Action taken: <input type="checkbox"/> Adopted with no changes in text <input type="checkbox"/> Adopted with changes <input type="checkbox"/> Adopted by reference <input type="checkbox"/> Withdrawn <input type="checkbox"/> Repeal adopted as proposed Effective date: <input type="checkbox"/> 30 days after filing <input type="checkbox"/> Other (specify): _____

Printed name and Title of person authorized to file rules: Sam Portera, CPA, Deputy Office Director, Tax Policy

Signature of person authorized to file rules: *Sam Portera* Sam Portera

OFFICIAL FILING STAMP	DO NOT WRITE BELOW THIS LINE OFFICIAL FILING STAMP	OFFICIAL FILING STAMP
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The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Chapter 06 Computer Equipment, Software, and Services

100 Computer Hardware

1. "Computer Hardware" includes the components, accessories, peripherals, machinery and equipment which constitute the physical computer assembly.
2. Rate and Application of Tax
Sales, leases, or rentals of computer hardware, parts, supplies, publications or other tangible personal property are taxable at the regular retail rate of sales or use tax unless otherwise exempt.

101 Computer Software Sales and Services

1. Definitions
 - a. "Computer Software" means any computer data, program or routine, or any set of one or more programs or routines, which are used or intended to cause one or more computers, pieces of computer-related peripheral equipment, automatic processing equipment, or any combination thereof, to perform a task or set of tasks. Computer software may be contained in or on magnetic tapes, discs or other tangible or electronic media or downloaded online.
 - b. "Cloud Computing" describes the delivery of computing resources, including software applications, development tools, storage, and servers over the Internet. The term includes the software as a service model (SaaS), platform as a service model (PaaS), infrastructure as a service model (IaaS), and similar service models.
 - c. "Software as a Service" is software hosted and maintained by a third-party provider and delivered to customers over the internet as a service. The provider hosts and maintains the databases and code necessary for the application to run, and the application is run on the provider's servers.
 - d. "Platform as a Service" is a cloud computing model where a third-party provider delivers hardware and software tools to users over the internet. The provider hosts the hardware and software on its own infrastructure.
 - e. "Infrastructure as a Service" is a cloud computing model that delivers fundamental computing, network, and storage resources to consumers on-demand, over the internet.
2. Rate and Application of the Tax
 - a. The gross income received from computer software sales and services is taxable at the regular retail rate of sales tax. Computer software license fees (one-time or annual) and/or maintenance contract income are taxable regardless of how billed. Taxable services include the design and creation of a web page regardless of the location of the hosting server and certain services, delivered through SaaS, PaaS, IaaS and other cloud computing models.
 - b. The principal line of business of the seller is not material when determining the taxability of sales of computer software. Any bank, savings and loan or other thrift institution, accounting firm, computer program developer, dealer or other person is deemed to be a retailer when selling computer programs or software at retail to the final user or consumer.

- c. Sales of software or software services transmitted by the Internet to a destination outside the State of Mississippi where the first use of such software or software services by the purchaser occurs outside the State of Mississippi is exempt from sales tax.

102 (Reserved)

200 Professional Services

201 Certain professional services directly related to the technical design and programming of computer software are taxable and are included in gross taxable income including:

1. Charges for installing, configuring, debugging, modifying, testing, or troubleshooting computer hardware, networks, programs or software, are taxable regardless of how such charges are billed.
2. The recovery of damaged, deleted, or lost data or other services.
3. The initial charges for the training of user personnel or telephone support connected with the sale of computer hardware, programs, or software, are taxable regardless of when or where the services are provided.

203 Non-Taxable professional services include but are not limited to:

1. Identifying management information needs.
2. Analyzing business policies and conceptual design of new procedures.
3. Accounting and legal services such as advice on tax matters, assets management, budgetary matters, quality control, information security, operational and financial statements, auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets or adjusts such material.
4. Feasibility studies including economic and technical analysis of existing or potential computer hardware or software needs and alternatives.
5. Word processing, data entry, data retrieval, data search, information compilation, payroll and business accounting data production, and other computerized data and information storage or manipulation services are not taxable. This also includes charges for computer time used in providing these services.

204 However, when any of these services or other professional services is incidental to the sale of computer hardware, software, or programs, the entire charge is taxable.

205 (Reserved)

300 Use Tax

301 Section 27-67-3(i), defines computer software programs as tangible personal property for use tax purposes. The regular rate of use tax is due and payable from every person using, storing, or consuming such property within this state, possession of which is acquired in any manner.

302 (Reserved)

- 400 Wholesale Sales
- 401 Sales of tangible personal property and services to a licensed retailer for resale in the regular line of business are not taxable.
- 402 (Reserved)
- 500 Purchases
- 501 Purchases or rental of equipment and purchases of software or supplies used by a vendor in providing services to a user are taxable.
- 502 (Reserved)
- 600 Reporting Requirements
- 601 Adequate records must be maintained to substantiate tax classifications of sales and purchases.
- 602 (Reserved)

Chapter 06 Computer Equipment, Software, and Services

100 Computer Hardware

1. "Computer Hardware" includes the components, accessories, peripherals, machinery and equipment which constitute the physical computer assembly, ~~and the internalized instruction code which controls the basic operations (i.e. arithmetic and logic) of the computer and which causes the computer to execute instructions contained in system programs.~~
2. Rate and Application of Tax
Sales, leases, or rentals of computer hardware, parts, supplies, publications or other tangible personal property are taxable at the regular retail rate of sales or use tax unless otherwise exempt.

101 ~~Computer Program and Software Sales and Services~~

1. Definitions.—"Computer Program" is a series of instructions that are coded for acceptance or use by a computer system which are designed to permit the computer system to process data and provide results and information. The series of instruction may be contained in or on magnetic tapes, printed instructions, or other tangible or electronic media or downloaded via the Internet. This definition includes computer game cartridges or discs which ~~that~~ allow certain games to be played on a television set through interaction with a computer or on home computers.
 - ba. "Computer Software" means any computer data, program or routine, or any set of one or more programs or routines, which are used or intended to cause one or more computers, pieces of computer-related peripheral equipment, automatic processing equipment, or any combination thereof, to perform a task or set of tasks. is a collection of computer programs which work in cooperation with one another to perform automated tasks. Computer software may be contained in or on magnetic tapes, discs or other tangible or electronic media or downloaded online.
 - b. "Cloud Computing" describes the delivery of computing resources, including software applications, development tools, storage, and servers over the Internet. The term includes the software as a service model (SaaS), platform as a service model (PaaS), infrastructure as a service model (IaaS), and similar service models.
 - c. "Software as a Service" is software hosted and maintained by a third-party provider and delivered to customers over the internet as a service. The provider hosts and maintains the databases and code necessary for the application to run, and the application is run on the provider's servers.
 - d. "Platform as a Service" is a cloud computing model where a third-party provider delivers hardware and software tools to users over the internet. The provider hosts the hardware and software on its own infrastructure.
 - e. "Infrastructure as a Service" is a cloud computing model that delivers fundamental computing, network, and storage resources to consumers on-demand, over the internet.
2. Rate and Application of the Tax

- a. The gross income received from computer ~~program or software~~ sales and services is taxable at the regular retail rate of sales tax. Computer ~~program software~~ license fees (one-time or annual) and/or maintenance contract income are taxable regardless of how billed. Taxable services ~~also include~~ the design and creation of a web page regardless of the location of the hosting server and certain services, delivered through SaaS, PaaS, IaaS and other cloud computing models.
- b. The principal line of business of the seller is not material when determining the taxability of sales of computer ~~programs or software~~. Any bank, savings and loan or other thrift institution, accounting firm, computer program developer, dealer or other person is deemed to be a retailer when selling computer programs or software at retail to the final user or consumer.
- c. Sales of software or software services transmitted by the Internet to a destination outside the State of Mississippi where the first use of such software or software services by the purchaser occurs outside the State of Mississippi is exempt from sales tax.

102 (Reserved)

200 Professional Services

~~200201~~ ~~Professional Services.~~ Certain Professional services directly related to the technical design and programming of computer software are taxable and are included in gross taxable income including:

~~201202~~ ~~Taxable professional services include but are not limited to:~~

- 1. Charges for installing, configuring, debugging, modifying, testing, or troubleshooting computer hardware, networks, programs or software, are taxable regardless of how such charges are billed.
- 2. The recovery of damaged, deleted, or lost data or other services ~~using ARCserve or Norton PC Tools or other similar computer programs or software.~~
- 3. The initial charges for the training of user personnel or telephone support connected with the sale of computer hardware, programs, or software, are taxable regardless of when or where the services are provided.

~~202203~~ Non-Taxable professional services include but are not limited to:

- 1. Identifying management information needs.
- 4. Analyzing business policies and conceptual design of new procedures.
- 5. Accounting and legal services such as advice on tax matters, assets management, budgetary matters, quality control, information security, operational and financial statements, auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets or adjusts such material.

4. Feasibility studies including economic and technical analysis of existing or potential computer hardware or software needs and alternatives.
5. Word processing, data entry, data retrieval, data search, information compilation, payroll and business accounting data production, and other computerized data and information storage or manipulation services are not taxable. This also includes charges for computer time used in providing these services.

~~203~~204 However, when any of these services or other professional services is incidental to the sale of computer hardware, software, or programs, the entire charge is taxable.

~~204~~205 (Reserved)

300 Use Tax

~~300~~301 ~~Use Tax.~~—Section 27-67-3(i), defines computer software programs as tangible personal property for use tax purposes. The regular rate of use tax is due and payable from every person using, storing, or consuming such property within this state, possession of which is acquired in any manner. ~~However, software maintained on a server located outside the state and accessible for use only via the Internet is not taxable.~~

~~301~~302 (Reserved)

400 Wholesale Sales

~~400~~401 ~~Wholesale Sales.~~—Sales of tangible personal property and services to a licensed retailer for resale in the regular line of business are not taxable.

~~401~~402 (Reserved)

500 Purchases

~~500~~501 ~~Purchases.~~—Purchases or rental of equipment and purchases of software or supplies used by a vendor in providing services to a user are taxable.

~~501~~502 (Reserved)

600 Reporting Requirements

~~600~~601 Adequate records must be maintained to substantiate tax classifications of sales and purchases.

~~601~~602 (Reserved)