



New Massachusetts Tax Law Affects Information Technology Providers Effective July 31, 2013

Massachusetts passed a new tax law, effective July 31, 2013, imposing a 6.25% sales and use tax on certain information technology services including:

- > telecommunications services,
- > computer system design services, and
- > the modification, integration, enhancement, installation or configuration of standardized, aka, pre-written, software (“software modification services”).

The law defines “computer system design services” 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.” It appears the legislators were focused on taxing services provided by companies that primarily provided computer system design services or software modification services.

Based on a July 25th letter from the Chairmen of the Massachusetts House Committee on Ways and Means and the Senate Committee on Ways and Means to the commissioner of the Massachusetts Department of Revenue (“DOR”), the statute was intended to affect companies that fall within NAICS codes 541511 and 541512. NAICS 541511 is used for companies primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer.

NAICS 541512 is used for companies primarily engaged in planning and designing computer systems that integrate computer hardware, software, and communication technologies. The hardware and software

components of the system may be provided by third parties or vendors or as part of the integrated services. These companies often install the system and train and support users of the system.

However, based on the language of the statute itself, it is unclear whether the law is intended to distinguish between mere staff augmentation, on the one hand, and IT services that remain under the control or direction of the vendor, on the other hand. Understandably, many IT staffing and services companies are concerned about the application of this new tax. The lack of clarity has generated a lot of calls and inquiries to the DOR and to the offices of state senators and representatives.

Massachusetts announced this new tax in a technical information report, TIR 10-13, that was only released on July 25th. Here's a link: <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2013-releases/tir-13-10.html>.

To comply with the law, as of July 31st a service provider is to invoice its customers for the new tax on sales that are sourced to Massachusetts. Service providers are expected to report and remit the tax online using Form ST-9 (and soon its successor ST-10) by the 20th day of the subsequent month, except for July 31st transactions, which are due to be reported and remitted along with August transactions by September 20, 2013.

If a business is determined to be responsible for collecting the tax, it will first need to register with the DOR. This registration is done by an online registration using the DOR's WebFile site at: <https://wfb.dor.state.ma.us/webfile/Business/Public/Webforms/Login/Login.aspx>.

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