CHART 1
Wisconsin Sales and Use Tax Treatment of Computer Software

Type of Program, Software, Modification or Enhancement Sold, Licensed, Leased or Rented:	Computer Programs,[1] Computer Software,[4] Modifications or Enhancements	Maintenance Contract[5] Sold or Renewed Prior to 3/6/2009	Maintenance Contract[5] Sold or Renewed From 3/6/2009 - 9/30/2009	Maintenance Contract[5] Sold or Renewed After 9/30/2009
I. Prior to March 6, 2009				
A. Computer programs, other than custom computer programs[1] in I.B., below..............	Taxable	Taxable[7]	Taxable[7]	Taxable[8]
B. Custom Computer Programs[2], including the following:				
SAP R/3-type computer programs[3].	Not Taxable	Not Taxable	Not Taxable	Not Taxable
Other custom computer programs.	Not Taxable	Not Taxable	Not Taxable	Not Taxable
II. After March 5, 2009				
A. Prewritten computer software,[4] including SAP R/3-type software.	Taxable	N/A	Taxable[7]	Taxable[8, 10]
B. Prewritten computer software[4] with a modification or enhancement that is designed and developed to the specifications of a specific purchaser. There is not a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement.	Taxable	N/A	Taxable[7]	Taxable[8]
C. Prewritten computer software[4] with a modification or enhancement that is designed and developed to the specifications of a specific purchaser. There is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement.				
Prewritten computer software.	Taxable	N/A	Taxable[7]	Taxable[8, 10]
Modifications or enhancements described above.	Not Taxable[6]	N/A	Not Taxable[6, 9]	Taxable[8, 10]
D. Computer software other than prewritten computer software.	Not Taxable	N/A	Not Taxable	Not Taxable

[1] Prior to March 6, 2009, "computer programs other than custom computer programs" are tangible personal property for Wisconsin sales and use tax purposes.

[2] Prior to March 6, 2009, sec. Tax 11.71(1)(e), Wis. Adm. Code (April 1993 Register), applies to determine whether a computer program is a custom program.

[3] SAP R/3-type computer programs are computer programs consisting of prewritten modules that cannot be used by the purchaser without a substantial amount of resources, time and effort to make them usable to the purchaser, as determined by the Wisconsin Supreme Court in the case of *Wisconsin Department of Revenue vs. Menasha Corporation* (No. 2004AP3239, July 11, 2008). Computer programs of this type are not subject to tax if sold, licensed, leased or rented prior to March 6, 2009. Computer programs of this type are subject to tax as "prewritten computer software" if sold, licensed, leased or rented after March 5, 2009.

[4] Beginning March 6, 2009, "prewritten computer software," as defined in sec. 77.51(10r), Wis. Stats., as created by 2009 Wis. Act 2, is tangible personal property for sales and use tax purposes.

[5] "Maintenance contract" means a software maintenance contract or warranty for computer software that provides for the future performance of or payment for the repair, service, alteration, fitting, inspection or maintenance of computer software, whether prewritten or other than prewritten.

[6] The tax treatment indicated is limited to modifications or enhancements that consist of writing program code to enable software to perform functions not available in the existing prewritten computer software. Examples of services that are not considered modifications or enhancements for purposes of this chart include reconfiguration of start-up information, reinstallation of functions inadvertently deleted, and adding new program code to repair existing functions.

[7] *Maintenance contracts for taxable computer software or taxable computer programs - Contract sold or renewed prior to October 1, 2009 -* If the contract includes taxable and nontaxable products or services, the entire charge for the contract is taxable unless it is determined by the department that another method, such as allocation or primary purpose, more accurately reflects the tax.

[8] **Maintenance contracts for taxable computer software or taxable computer programs - Contract sold or renewed on October 1, 2009 and thereafter -** If the contract includes "distinct and identifiable" products and/or services (e.g., software maintenance and telephone support) sold for one nonitemized price, the sale of the contract may constitute a "bundled transaction." Special rules apply to determine if the contract is a "bundled transaction," and if it is, how the transaction is to be treated for sales and use tax purposes. See bundled transactions for additional information.

[9] This applies only in the case where the maintenance contract covers only the modifications or enhancements. If the maintenance contract covers both the prewritten software and the modifications or enhancements, see Footnote 7.

[10] **Maintenance contracts for taxable computer software or taxable computer programs - Contract sold or renewed on October 1, 2009 and thereafter –** Generally, the tax treatment of a maintenance contract for computer software follows the tax treatment of the customer's purchase, license, lease, or rental of the computer software covered by the maintenance contract. In some cases, a software maintenance contract may relate to software for which, at the time the contract is sold or renewed, all of the following apply: (1) the purchaser has in effect a license (or licenses) which was acquired by the purchaser prior to March 6, 2009, and was not subject to sales and use taxes at the time of purchase (Part I.B.), (2) the purchaser also has in effect a license (or licenses) acquired after March 5, 2009 and was taxable at the time of purchase (Parts II.A., B., or C.), and (3) the software maintenance contract is sold for one nonitemized price. In such situations, the transaction will generally be considered a "bundled transaction" (i.e., the retail sale of 2 or more distinct and identifiable products ("product" includes services) sold for one nonitemized price, as prescribed in sec. 77.51(1f), Wis. Stats.)). When at least one of the distinct and identifiable products in a bundled transaction is taxable, the entire sales price of the bundled transaction is taxable, unless, at the retailer's option, the retailer can identify by reasonable and verifiable standards from the retailer's books and records that are kept in the ordinary course of its business for other purposes, including purposes unrelated to taxes, the portion of the price that is attributable to products or services that are not subject to the tax. **Exception:** If a transaction would be a "bundled transaction" but for the fact that the taxable items of the transaction, based on the seller's purchase price or sales price of the taxable items, is no greater than 10% of all of the bundled products, (a) the transaction is not a "bundled transaction," (b) the entire sales price is not taxable, and (c) the seller is liable for Wisconsin sales or use tax based on the seller's purchase price of the taxable items sold. See "bundled transactions," for additional information.

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