

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 14
Corrected Copy 2/11/97

Short Title: Update Custom Computer Software.

(Public)

Sponsors: Representatives Cansler, Blue, Capps, Church; Beall, Creech, Davis, Hall, McComas, McMahan, and Rayfield.

Referred to: Finance.

February 3, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE SALES TAX DEFINITION OF CUSTOM COMPUTER
3 SOFTWARE.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 105-164.3(20) reads as rewritten:

6 "(20) ~~'Tangible personal property' means and includes personal property which~~
7 Tangible personal property. – Personal property that may be seen,
8 weighed, measured, felt-felt, or touched or is in any other manner
9 perceptible to the senses. The term "tangible personal property" shall does
10 not include stocks, bonds, notes, insurance-insurance, or other
11 obligations or securities, nor shall does it include water delivered by or
12 through main lines or pipes either for commercial or domestic use or
13 consumption. The term includes all "canned" or prewritten computer
14 programs, either in the form of written procedures or in the form of storage
15 media on which or in which the program is recorded, held, or existing for
16 general or repeated sale, lease, or license to use or consume. The term does
17 not include the design, development, writing, translation, fabrication, lease,
18 license to use or consume, or transfer for a consideration of title or possession

1 of a custom computer program, other than a basic operational program, either
2 in the form of written procedures or in the form of storage media on which or
3 in which the program is recorded, or any required documentation or manuals
4 designed to facilitate the use of the custom computer program. The term also
5 does not include access to a computer program or a database when the user of
6 the computer program or database receives a separately stated fee or other
7 charge for the access.

8 As used in this subdivision:

- 9 a. " ~~Basic operational program~~" or " ~~control program~~" means a
10 computer program that is fundamental and necessary to the
11 functioning of a computer. A basic operational program is that
12 part of an operating system, including supervisors, monitors,
13 executives, and control or master programs, which consists of the
14 control program elements of that system. A control or master
15 program, as opposed to a processing program, controls the
16 operation of a computer by managing the allocation of all system
17 resources, including the central processing unit, main storage,
18 input/output devices, and processing programs. A processing
19 program is used to develop and implement the specific
20 applications the computer is to perform.
- 21 b. " ~~Computer program~~" means the complete plan for the solution of
22 a problem, such as the complete sequence of automatic data-
23 processing equipment instructions necessary to solve a problem,
24 and includes both systems and application programs and
25 subdivisions, such as assemblers, compilers, routines, generators,
26 and utility programs.
- 27 c. " ~~Custom computer program~~" means a computer program
28 prepared to the special order of the customer. Custom computer
29 programs include one of the following elements:
- 30 1. Preparation or selection of the programs for the customer's
31 use requires an analysis of the customer's requirements by
32 the vendor; or
 - 33 2. The program requires adaptation by the vendor to be used
34 in a particular make and model of computer utilizing a
35 specified output device.
- 36 d. " ~~Storage media~~" means punched cards, tapes, disks, diskettes, or
37 drums.
38 computer software delivered on a storage medium, such as a cd rom, a
39 disk, or a tape."

40 Section 2. G.S. 105-164.13 is amended by adding a new subdivision to read:

41 "(43) Custom computer software. – 'Custom computer software' is software
42 written in accordance with the specifications of a specific customer.
43 The term does not include prewritten software that is held or exists for

1 general or repeated sale or lease, even if the prewritten program was
2 initially developed on a custom basis or for in-house use.

3 Modification of a prewritten program to meet a customer's
4 needs is custom computer software only to the extent of the
5 modification, unless the charge for modifying the program
6 exceeds fifty percent (50%) of the total charge for the program.
7 If the charge for modifying the program exceeds this threshold,
8 the entire program is considered to be custom computer software.
9 To be exempt from tax, a charge for modifying a prewritten
10 program must be separately stated."

11 Section 3. This act becomes effective October 1, 1997, and applies to sales
12 made on or after that date.