

WEB SITE DESIGN, DEVELOPMENT, AND HOSTING

Issue:

Are retail sales of Web site design, development, and hosting by a Web site service provider subject to sales and use tax?

Conclusion:

Charges by a Web site service provider for Web site design and development are not subject to tax unless the Web site design is transferred to the customer on a tangible storage medium such as a computer disc. If the Web site design is retained by the service provider for hosting, or **electronically** transferred to either a third party hosting entity or to the customer, the charges are not subject to tax.

Web site hosting by a service provider is not one of the statutorily enumerated services subject to tax in Nebraska.

Definitions:

Web site service provider. A Web site service provider is the person or business who performs any or all of the functions related to Web sites, including the design, development, hosting, and updating of all or part of a Web site.

Web site hosting. Web site hosting is the storage of Web site data on a computer, and can include the domain name registration, security, access monitoring, and data backup services.

Analysis:

Pursuant to [Neb. Rev. Stat. §77-2703](#), retail sales of tangible personal property, computer software, and certain enumerated services are subject to tax. Computer software is defined in [Nebraska Sales and Use Tax Regulation 1-088](#) as a sequence of instructions which directs the computer to process data.

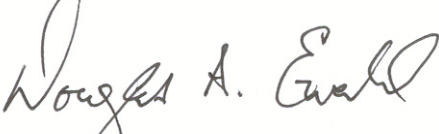
The development of a Web site generally involves consulting, designing, programming, and placing the site on a server for viewers to access via the Internet. Web sites are made of a combination of one or more files, created through the use of different HTML editors, graphics, and sounds. The files, which can vary in their levels of sophistication, tell the viewer's browser what to do when a Web site is viewed. The Web site may also contain embedded programming (scripts) that may be executed by the viewer's browser to perform such functions as downloading files, purchasing products, enrolling for memberships, or connecting to or interacting with software applications or databases that reside on another computer.

Once the Web site is developed, it can be transferred to the customer, transferred to a third party hosting service, or retained by the developer for hosting. Purchasers of Web sites may be provided passwords by the hosting entity in order to upload or delete files, create file directories, change

permissions, etc. Entities providing hosting services furnish the equipment and servers which are used by many customers simultaneously.

Charges for the design, development, and hosting of Web sites which are retained by the service provider for hosting, or electronically transferred to the customer or to a third party hosting entity, are not charges for the sale of tangible personal property, computer software, or one of the statutorily enumerated services subject to tax. While the Web site may contain some embedded programming to assist the viewer in performing tasks such as accessing information, purchasing products, enrolling for memberships, or generally interacting with the Web site, this programming is not being used by the purchaser to process data or operate a computer system, and therefore is not considered the sale of computer software to the purchaser. Only when the Web site is transferred to the customer on tangible storage media does the transaction represent the sale of tangible personal property which is taxable. The Web site service provider is the consumer of any programming used in designing, developing, or hosting the Web site, and must pay tax on its purchases of hardware, software, and other taxable property and services.

APPROVED:

A handwritten signature in cursive script that reads "Douglas A. Ewald". The signature is written in black ink and is positioned above the printed name and title.

Douglas A. Ewald
Tax Commissioner

March 1, 2010