

PUBLICATION

Spotlight on Alabama: Alabama Supreme Court Holds that All Software is Subject to Sales and Use Tax, While Confirming that Separately Invoiced Services for Custom Software are Not Subject to Tax

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In a recent decision, the Alabama Supreme Court held that the sale of computer software, whether "canned" or customized, is subject to Alabama sales and use tax, while confirming that separately invoiced services for custom software programming accompanying the conveyance of software are nontaxable. The case is styled *Ex parte Russell County Community Hospital, LLC* and was decided on May 17, 2019.

In a series of transactions between February 2012 and October 2014, Russell County Community Hospital, LLC (RCCH) purchased computer software and equipment from Medhost of Tennessee, Inc. (Medhost). RCCH contracted with Medhost to have Medhost install and implement the software and equipment at the hospital facility operated by RCCH. Medhost collected and remitted approximately \$18,000 in sales tax in connection with the transaction. Subsequently, RCCH petitioned the Alabama Department of Revenue (the Department) for a refund of the sales tax paid on the transaction on the theory that the software was nontaxable custom software under Department regulations and that the charges represented charges for services rendered and not for taxable tangible personal property. The Department denied RCCH's request for a refund.

After a series of appeals, the Alabama Supreme Court held that all software, whether "canned" or customized for a particular user, constitutes "tangible personal property" taxable for purposes of Alabama sales and use tax. However, the Court reaffirmed that custom software programming services related to the conveyance of custom software are not subject to sales and use tax to the extent such services are separately stated by the vendor and invoiced to the customer. Nontaxable services related to the conveyance of custom software include, but are not limited to, determining a software user's needs, designing and programming new software for a particular user, modifying or configuring existing software to meet a particular user's needs, installing software, and training users to operate software.

Planning Takeaway: This opinion highlights the importance of properly documenting and invoicing a custom software programming transaction for Alabama sales and use tax purposes. Baker Donelson stands ready to assist you, whether a service provider or a customer, in negotiating the terms of the invoicing of the services and documenting such transaction for Alabama sales and use tax purposes in order to maximize tax efficiency, and minimize Alabama sales and use tax.

Please remember that advice and counsel regarding your particular tax related issues, including the potential impact of the developments outlined above, are dependent on your specific facts and circumstances. For more information about how these issues may affect you, or related matters, contact the co-authors of this alert, [Ross Cohen](#) and [Allen Blow](#), or any member of the Firm's [Tax Group](#).