

Pennsylvania Supreme Court Upholds Tax on Canned Computer Software

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July 13, 2010

In a long-anticipated decision, Pennsylvania's Supreme Court has ruled that transfers of canned computer software are subject to sales and use tax as tangible personal property. *Dechert LLP v. Commonwealth*, 12 MAP 2008, decided July 20, 2010. McNees attorneys Dave Kraus, with Randy Varner, prepared the briefs and argued the case before the Court on December 2, 2008. Four Justices joined the majority opinion; one Justice filed a concurring opinion; and, one Justice filed a dissenting opinion.

The majority determined that although the sales tax statute is somewhat lacking in clarity, legislative action surrounding Pennsylvania's tax on computer services during the 1990's suggests that the legislature was aware of, and therefore tacitly approved, the Department of Revenue's position that canned computer software constituted tangible personal property and was thereby taxable upon transfer. The Court upheld taxation of software transferred by disc and by electronic download. Although the Court did not directly decide the issue, the majority opinion indicates that tax does not apply to software support and maintenance services which do not involve any transfer of software or other tangible personal property.

Please feel free to contact [Dave Kraus](#), [Randy Varner](#) or any of our other state tax lawyers if you need a copy of the Court's decisions or wish to further discuss how this decision affects you.

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