

# K&LNGAlert

NOVEMBER 2005

## Pennsylvania Tax

### Effective Immediately! Electronic Purchases of Canned Software Now Subject to Pennsylvania Sales and Use Tax

On November 1, 2005, the Pennsylvania Department of Revenue (the "DOR") reversed its historic position with respect to the sales and use tax treatment of purchases of "canned" software. This sweeping change forces Pennsylvania purchasers of canned software as well as Pennsylvania businesses who sell such software to Pennsylvania purchasers to review immediately their internal systems for collecting and paying sales and use tax and to make appropriate modifications. In limited circumstances, some taxpayers may be eligible to claim a sales and use tax refund.

Since 2000, the DOR has adopted the position that the purchase of canned software (that is, software that is not customized and is generally available to the public) was subject to sales and use tax only if it was transmitted to the purchaser in a physical medium (for example, shrink-wrapped software sold on a CD-ROM). If the same software were purchased over the Internet and downloaded directly, the purchase would be exempt from sales and use tax. In response to this development, many software vendors created electronic distribution systems for their software in order to provide a sales tax-free alternative for purchasers.

In Sales Tax Bulletin 2005-04, issued on November 1, 2005, the DOR announced that the sale or use of all canned software invoiced on or after November 1, 2005 would be subject to sales and use tax regardless of the method of delivery. This was in response to the Pennsylvania Commonwealth Court's ruling in *Graham Packaging* (September 15, 2005). Accordingly, all Pennsylvania taxpayers who pur-

chase canned software or pay for renewal licenses must pay Pennsylvania sales or use tax with respect to such purchases, regardless of how the software is delivered. Similarly, any business with physical presence in Pennsylvania who sells canned software over the Internet to Pennsylvania customers is now required to collect and remit sales tax on such sales. Receipts for renewal licenses of canned software now will also be subject to sales tax, regardless of how the initial delivery of the software was made.

Importantly, the DOR's change in position is effective as of November 1, 2005. Accordingly, any taxpayer who paid sales or use tax on electronic purchases of canned software that were invoiced before November 1, 2005 may be entitled to a refund of that tax. Vendors who collected sales tax on electronic purchases of canned software may either refund the sales tax to the purchaser or remit the sales tax to the DOR. Taxpayers should carefully review their purchase orders of electronically purchased software to confirm that they do not miss an opportunity to claim a refund.

---

**J. Stephen Barge**  
sbarge@klng.com  
412.355.8330

**Christopher R.K. Cawley**  
ccawley@klng.com  
412.355.8243

---

If you have questions or would like more information about K&LNG's Pennsylvania Tax Practice, please contact one of our lawyers listed below:

<b>HARRISBURG</b>	Raymond P. Pepe	rpepe@kIng.com	717.231.5988	Fax 717.231.4501
	Carleton O. Strouss	cstrouss@kIng.com	717.231.4503	Fax 717.231.4501
<b>PITTSBURGH</b>	J. Stephen Barge	sbarge@kIng.com	412.355.8330	Fax 412.355.6501
	W. Henry Snyder	hsnyder@kIng.com	412.355.6720	Fax 412.355.6501



[www.kIng.com](http://www.kIng.com)

BOSTON • DALLAS • HARRISBURG • LONDON • LOS ANGELES • MIAMI • NEWARK • NEW YORK • PALO ALTO • PITTSBURGH • SAN FRANCISCO • WASHINGTON

Kirkpatrick & Lockhart Nicholson Graham (K&LNG) has approximately 1,000 lawyers and represents entrepreneurs, growth and middle market companies, capital markets participants, and leading FORTUNE 100 and FTSE 100 global corporations nationally and internationally.

K&LNG is a combination of two limited liability partnerships, each named Kirkpatrick & Lockhart Nicholson Graham LLP, one qualified in Delaware, U.S.A. and practicing from offices in Boston, Dallas, Harrisburg, Los Angeles, Miami, Newark, New York, Palo Alto, Pittsburgh, San Francisco and Washington and one incorporated in England practicing from the London office.

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

Data Protection Act 1988—We may contact you from time to time with information on Kirkpatrick & Lockhart Nicholson Graham LLP seminars and with our regular newsletters, which may be of interest to you. We will not provide your details to any third parties. Please e-mail [cgregory@kIng.com](mailto:cgregory@kIng.com) if you would prefer not to receive this information.

© 2005 KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP. ALL RIGHTS RESERVED.