

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

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Sales Tax
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Taxability of Electronic Filing Services

The issue is whether electronic filing services provided by Company A on behalf of its customers are subject to New York state and local sales taxes.

On a periodic basis, certain companies are required to file various materials with the U.S. Securities and Exchange Commission (SEC). The SEC utilizes a filing system known as the Electronic Data Gathering, Analysis, and Retrieval System or EDGAR. Company A provides a service to its customers, which consists of obtaining disclosure materials from customers in electronic format, converting the customer-provided information into an HTML data file in the form required by the SEC, submitting the file electronically to the customer for approval, and submitting the approved file to the SEC's EDGAR filing system. Neither the customer nor the SEC receives the file in tangible form.

According to the SEC's Web site, the EDGAR database performs automated collection, validation, indexing, acceptance, and forwarding of many of the submissions by parties required by law to file information with the SEC. EDGAR may be used by individual Web users to search for real-time filings and other company information. See www.sec.gov/edgar.

Tax Law section 1105(a) imposes sales tax on "The receipts from every retail sale of tangible personal property." Tangible personal property includes "Corporeal personal property of any nature." Tax Law section 1101(b)(6).

As relevant here, Tax Law section 1105(c)(1) imposes tax on the receipts from the sale, except for resale, of the service of:

The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is or may not be substantially incorporated in reports furnished to other persons, and excluding the services of . . . persons acting in a representative capacity, . . .

Tax Law section 1105(c)(9) imposes tax on the "The furnishing or provision of an entertainment service or of an information service (but not an information service subject to tax under [Tax Law section 1105(c)(1)]) which is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature." Converting information already in the customer's possession from one form or medium to another, without interpreting or recasting it, so that the form of the information changes but not the intelligence contained therein, does not constitute an information service. *Finserv v Tully*, 94 AD2d 197 (3d Dept 1983), affd 61 NY2d 947 (1984).

According to the described facts, no tangible property is transferred either to the customer or on its behalf. Accordingly, charges by Company A to its customers for preparing submissions to the SEC's EDGAR filing system do not constitute receipts from sales of tangible personal property subject to sales tax under Tax Law section 1105(a).

The service involves Company A obtaining a customer's information in electronic form, converting the same information into an HTML file suitable for filing with the SEC's EDGAR system, submitting an electronic draft to the customer for review and approval, and filing the approved electronic draft with the SEC. The format of the customer's information is changed, but the intelligence contained therein is not changed. Accordingly, the service provided by Company A does not constitute an information service. See *Finserv v Tully, supra*.

Based on the foregoing facts, Company A is not providing an enumerated service subject to New York state and local sales tax.

To the extent that the facts differ from the facts described herein, the legal conclusion and the advice provided may change. For example, if Company A provides any compilation, analysis, or interpretation of the information received from its customers, Company A may be considered to be providing an information service under Tax Law section 1105(c)(1) or (9). Moreover, to the extent that Company A is providing taxable property or services combined with the electronic filing service described herein, the entire charge for such property and/or services may be subject to tax unless the taxable and nontaxable components are separately available, and the charges for such components are separately stated and reasonable in relation to the overall charge.

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