

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-81 (21) S
Sales Tax
September 10, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810522B

On May 22, 1981, a Petition for Advisory Opinion was received from Benjamin Swartz, 56 Hedgerow Lane, Commack, New York 11725.

The issue raised is whether Petitioner must pay sales tax on the rental of keypunch machines and on the purchase of keypunch cards.

Petitioner operates an unincorporated keypunch service. All sales by Petitioner are taxable, except for an occasional tax exempt transaction. Petitioner rents keypunch machines and purchases keypunch cards and is charged sales tax thereon. Petitioner does not believe that sales tax should be paid on the rental of the keypunch machine or the purchase of the keypunch cards. Both machine and cards are used to generate taxable sales. The keypunched cards are delivered to the customer. In some instances (less than 50% of time) Petitioner will transfer information from cards to a computer tape or cassette at customer's request.

Section 1105(a) of the Tax Law imposes a tax on "The receipts from every retail sale of tangible personal property . . .". Section 1101(b)(4) of the Tax Law defines a retail sale as ". . .(i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such . . .". An exemption from the tax imposed pursuant to Section 1105(a) is provided with respect to "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing, processing" (Tax Law §1115(a)(12)).

Petitioner predominantly uses the keypunch machines to produce keypunched cards which are transferred to Petitioner's customers. Since Petitioner furnishes the cards on which the customer's source data is recorded, a sale of tangible personal property occurs. Accordingly, as Petitioner is using the keypunch machines to produce tangible personal property for sale, Petitioner may rent the machines tax exempt, provided a properly completed Exempt Use Certificate (Form ST-121) is furnished to the vendor.

Since Petitioner transfers the keypunch cards to the customer as part of the finished product, Petitioner may purchase the cards tax exempt provided a properly completed Resale Certificate (Form ST-120) is furnished to the supplier.

DATED: August 25, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau