

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

TSB-A-91 (19)S
Sales Tax
February 14, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900911D

On September 11, 1990 a Petition for Advisory Opinion was received from Computerized Transactions Inc., 2 Nelson Avenue, Hicksville, New York 11801.

The issue raised by Petitioner, Computerized Transactions Inc., is whether various printing and mailing services and software sales and services rendered by it for its clients are subject to sales tax.

Petitioner provides the following printing and mailing services involving the use of a computer:

- 1) Petitioner receives from its client envelopes, letterhead and data. Petitioner enters its clients' data on a computer disc which is used with a computer laser printer to personalize its clients' letterheads and envelopes. The letterheads and envelopes are then delivered to a mailer who inserts the letterhead into the envelopes and affixes the necessary postage. The completed mailing devices are then either mailed by the mailer or sent directly to Petitioner's client. Petitioner also gives its client the computer disc. Petitioner charges its client one charge for the entire transaction.
- 2) Petitioner's client supplies it with a computer disc which contains data files. Envelopes, personalized letterhead or preprinted flyers are also supplied. Petitioner prints labels from the information contained on the disc and gives the envelopes, flyers and labels to a mailing house who stuffs the envelopes, puts postage and labels on the envelopes and mails them.
- 3) Petitioner receives from its client handwritten or typewritten data, enters the information on its computer and electronically delivers the results to its client's computer.
- 4) Petitioner sells packaged software to its client and may or may not install the programs.
- 5) Petitioner sells packaged software which may be altered or customized to its client's specifications.

Section 1105(a) imposes a tax upon "the receipts from every retail sale of tangible personal property. . ."

Section 1105(c) imposes a tax upon the receipts from every sale, except for resale, of the following services:

(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner. . .

* * *

(2) Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed.

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides that "The sales tax is a 'destination tax', that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate."

Section 526.5(g)(1) of the Sales and Use Tax Regulations provides that "The cost of transportation of tangible personal property. . .which is separately stated. . .is excluded from the receipts subject to tax."

Section 527.3(a)(1) of the Sales and Use Tax Regulations provided that "Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from the service of furnishing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any manner such as by tapes, discs, electronic readouts or displays."

Service 1

The sale of the computer disc is subject to sales tax under Section 1105(a) of the Tax Law while the imprinting of the client's mailing devices is subject to said tax under Section 1105(c)(2). Charges for postage or transportation, if separately stated are exempt from sales tax in accordance with Section 526.5(g)(1) of the Sales and Use Tax Regulations. If Petitioner bills its client for all the services as a single charge, then the entire charge would be subject to sales tax. It is noted that pursuant to Section 1115(n)(1) of the Tax Law that portion of the mailing that is mailed to recipients outside the state is not subject to the imposition of sales or use tax.

Service 2

Petitioner is supplying its client with a printer-mailer service which is subject to sales tax pursuant to Section 1105(c)(2) of the Tax Law. Petitioner may purchase the services of stuffing envelopes and affixing labels and postage for resale. It must collect from its client the tax in accordance with the instructions contained in Publication 831, Collection and Reporting Instructions for Printers and Mailers. The fact that Petitioner's client supplies the computer disc does not effect tax consequences of this particular transaction.

It is noted that pursuant to Section 1115(n)(1) of the Tax Law that portion of the mailing that is mailed to recipients outside the state is not subject to the imposition of sales or use tax.

Service 3

The processing by computer of its client's handwritten or typewritten data and then transmitting the processed information electronically to its client is subject to tax under Section 1105(c)(1) of the Tax Law. In Murphy Heating Service v. State Tax Commission, 124 AD2d 907 the Appellate Division held that "The Tax Commission's interpretation of Tax Law §1105(c)(1) as including the electronic transfer of information used by the parties here was neither irrational nor unreasonable and must be upheld. . .". Furthermore Section 527.3(a)(1) of the Sales and Use Tax Regulations provides that the sales tax imposed by Section 1105(c)(1) applies to information received in the form of electronic readouts or displays.

Services 4 & 5

Technical Services Bureau Bulletin 1978-1 defines software as:

Instructions and routines (programs) which, after an analysis of the customers specific data processing requirements, are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his EDP system." To be considered exempt "software" for purposes of this bulletin, one of the following elements must be present:

A. Preparation or selection of the program for the customer's use requires an analysis of the customer's requirements by the vendor.

or

B. The program requires adaptation, by the vendor, to be used in a specific environment, i.e., a particular make and model of computer utilizing a specified output device. For example, a software vendor offers for sale a pre-written sort program which can be used in several computer models. Prior to operation, instructions must be added by the vendor which specify the particular computer model in which the program will be utilized.

The sale of packaged software by Petitioner to its client is the sale of tangible personal property subject to tax under Section 1105(a) of the Tax Law. The installation of such software is the installation of tangible personal property which is subject to sales tax under Section 1105(c)(3) of the Tax Law.

TSB-A-91 (19)S
Sales Tax
February 14, 1991

Software sold which requires customization would meet the qualification for exempt software as described in Technical Services Bureau Bulletin 1978-1. The installation of exempt software is also exempt.

DATED: February 14, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.