New York State Department of Taxation and Finance

Taxpayer Services Division
Technical Services Bureau

TSB-A-91 (75)S
Sales Tax
November 26, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

<u>ADVISORY OPINION</u>   <u>PETITION NO.S910621A</u>

On June 21, 1991 a Petition for Advisory Opinion was received from Insurance Automation Systems, Inc., 4400 E. Emery Industrial Parkway, Warrensville, Ohio 44128.

The issue raised, by Petitioner, Insurance Automation Systems, Inc., is whether during the period from June 1, 1988 through May 31, 1991 it was selling customized insurance computer software which was not subject to sales tax, or an information service which was subject to sales tax under Section 1105(c)(1) of the Tax Law.

Petitioner has created a specialized computer software program, designed on a case by case basis for insurance agents, that underwrites, calculates, and ultimately quotes prices for commercial, homeowners and automobile insurance. In order for the program to perform its various functions, each user's insurance company contracts, computer hardware requirements, and existing computer software requirements have to be set in the program to design the software sold by Petitioner.

When Petitioner made a sale to a customer, who was typically a licensed insurance agent, Petitioner made a field visit and analyzed the customer's computer requirements (i.e., model, hardware and software capabilities, etc.) and noted the individual companies the agent wrote for. Each individual insurance company used by an agent has a unique rating structure that took into account different territories of potential customers of the agent and other demographic data based on those territories. Prior to delivery to the customer, the program was created and customized to reflect structures and requirements of the Buyer's need.

Upon delivery to the customer, Petitioner installed on-site the software, further customized it to fit the agent's specific computer needs, and trained appropriate personnel as to operation of the software. During this on-site installation, software modifications were made which included: (i) Creation of customized proposal letters, unique to the agency, (ii) Creation of unique quote profiles matching the particular risk quoting requirements of the customer, (iii) Changes to the default settings of virtually all variables, based on projected quoting needs of the customer; and, (iv) Creation of commercial rating factors which vary not only by company represented, but which also can vary by agency. At this point, the program was able to calculate insurance rates from individual companies, based on the prior data gathered from the agents combined with each insurance company's unique rating structure, and generate proposals for the agent's prospective customers.

Each report generated by the program was based on the prospective customer's individual needs, demographics, and territory, and therefore the proposal was unique and useful only to that customer. For example, if a potential customer desired to have automobile insurance, the agent would input into the computer such data as the customer's age, family status, type of car, traffic violations points, etc. The program combined this information with the data unique to the individual agent (based on the insurance companies they work with) that is already incorporated into the program by Petitioner in his initial set-up and adaption, and it produced a report and proposal unique to that customer.

The program also incorporated those proposals into a letter addressed to the prospective customer. The letter included an insurance price quote. If a customer decided to buy an insurance policy from the agent based on the program, the program also produced the individual applications that were forwarded to the insurance company.

Petitioner created a data base of the rating factors of individual insurance companies which operate in New York State. When a customer of Petitioner's client wanted a quote, Petitioner's client was able to give that customer a quote for each insurance company it represented.

The tax status of receipts from computer program ("software") sales and services during the period in issue is explained in Department of Taxation and Finance Technical Services Bulletin 1978-1(S), issued February 6, 1978 which states that:

Instructions and routines (programs) which, after an analysis of the customer's 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. Presentation 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 software may be in the form of:

a.   Systems programs (except for those instruction codes which are considered tangible personal property in paragraph 1 above)--programs that control the hardware itself and allow it to compile, assemble and process application programs.

b.   Application programs--programs that are created to perform business functions or control or monitor processes.

c.   Pre-written programs (canned)--programs that are either systems programs or application programs and are not written specifically for one user.

d.   Custom programs--programs created specifically for one user.

Section 1105(c)(1) of the Tax Law imposes a tax upon:

(1) The furnishing of information by printed, mimeographed or multigraphed matter or by <u>duplicating written or printed matter in any other manner,</u> 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 not or may not be substantially incorporated in reports furnished to other persons, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news. (Emphasis supplied)

Section 527.3(a)(1) of the Sales Tax Regulations provides that duplicating written or printed material includes such things as ". . .tapes, discs, electronic readouts or displays."

The system sold by Petitioner contained two parts. The first part consisted of a data base containing the rating factors of individual insurance companies which operated in New York State. This portion of the system was an information service which was stored on electronic discs. (See: <u>Economic Information Systems, Inc</u>., Dec St Tx Comm, May 26, 1987, TSB-H-87(218)S.). This data base information was not personal or individual in nature since it was available to any insurance agent willing to purchase it from Petitioner. It is immaterial that Petitioner's client might use the information to produce a different quote for each of its customers. Therefore during the period from 3une 1, 1988 through May 31, 1991 this portion of the system sold by Petitioner was an information service that was not personal or individual in nature in accordance with the meaning and intent of Section 1105(c)(1) of the Tax Law and Section 527.3(a)(1) of the Sales and Use Tax Regulations and therefore was subject to the tax imposed by Section 1105(c) of the Tax Law.

The second part of the system sold by Petitioner consisted of customized application computer software. Petitioner's software required analysis of its customer's computer equipment and certain modifications were necessary to make the software compatible to such equipment and to the customer's individual needs. Therefore this portion of the system sold by Petitioner qualified for the exemption as the type of prewritten application program outlined in paragraphs A and B of Department of Taxation and Finance Technical Services Bulletin 1978-1(S) since it was considered to be intangible personal property; Astrogamma Inc., Adv Op Comm T&F, August 29, 1990, TSB-A-90(44)S; Answer Systems, Inc., Adv Op Comm T&F, January 15, 1991, TSB-A-91(9)S.

In the instant case to the extent that the system sold by Petitioner was sold as a single unit consisting of both the taxable information service and the nontaxable customized computer program, sales tax was due on the total price; SOQ Broadcasting Corp., Dec St Tax Comm, May 23, 1985, TSB-H-85(154)S; Dynamic Telephone Answering Systems, Inc., Dec St Tx Comm, May 28, 1986.

DATED: November 26, 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.