

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

TSB-A-94 (3)S
Sales Tax
February 18, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930809A

On August 9, 1993, a Petition for Advisory Opinion was received from G.E. Capital Fleet Services/GELCO Corp., Three Capital Drive, Eden Prairie, MN 55344.

The issue raised by Petitioner, G.E. Capital Fleet Services, is whether certain reports furnished by it to its customers are subject to sales tax.

The first of the reports furnished by Petitioner to its customers is known as the Personal Mileage Program.

Petitioner's customers are generally large corporations who lease vehicles for their employees and/or salespersons. Personal use of a business vehicle is deemed to be a taxable benefit as non-cash compensation. The objective of the Personal Mileage Program service is to provide the customer with a comprehensive reporting, valuation, and data capture system that will help them comply with the Internal Revenue Service requirements easily, yet effectively.

As part of this service, Petitioner:

- 1) Closely tracks changes in Internal Revenue Service regulations pertaining to personal use.
- 2) Compiles personal and total use miles captured from the customer's employee's expense reports and furnishes the customer with the calculated benefits for each employee.
- 3) Provides the customer with the flexibility to choose the appropriate personal compensation method suggested by the Internal Revenue Service.
- 4) Provides the customer with a quarterly detailed summary which they may distribute to employees.
- 5) Creates an annual report in December of each year which will be based on the total personal use mileage value in accordance with our customer's designated valuation method.

The second of the reports furnished by Petitioner to its customers is known as the Vehicle Related Expense Reporting Program.

Once again, Petitioner's clients are generally large corporations who lease vehicles for their employees and/or salespersons. Petitioner's clients, as expected, are concerned about the costs of operating their vehicles. The Vehicle Related Expense Reporting Program monitors operating expenses and isolates vehicles in the client's fleet that are not operating up to pre-determined standards set by its client. Petitioner processes the data provided and forwards the following detailed reports to the client:

Operations Summary: details variable costs, fixed costs and miles traveled.

Unit Expense Report: summary for all individual units in the customer's fleet.

Unit Maintenance Ledger: details specific vehicles whose operating costs are significantly above or below predetermined cost parameters set by the customer.

Fleet Model Recap: breaks down variable operating costs by year, make and model.

Replacement Projection Analysis: Isolates vehicles that will be due for replacement according to our customer's criteria.

The services provided by Petitioner are separate agreements apart from the motor vehicle lease, and in some instances the services may be performed for customers who do not lease their vehicles from Petitioner. Reports and service benefits are received in New York but the service is performed in Minneapolis. The reports are based solely on information provided by Petitioner's customer.

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

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 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.

Section 527.3(b)(2), Example 3 of the New York State Sales and Use Tax Regulations explains that the preparation of payrolls for customers by computer service companies is not a taxable information service as payrolls are considered to be personal and individual in nature and the information contained in a payroll may not be furnished to other parties. The exclusion from tax provided under Section 1105(c)(1) of the Tax Law also applies to the preparation of accounting reports, etc.

It has been held that furnishing information is integrating or recasting information received from a customer so that customer is given back some new information or some new significant intelligence concerning data furnished. (Finserv Computer Corporation v. Tully, 94 AD2d 197)

In the Personal Mileage Program and the Vehicle Related Expense Reporting Program the Petitioner has received information from its customers which it has in turn processed and has given back new information to its customers. This new information pertains only to properties owned or leased by Petitioner's customers. Thus, Petitioner's information service will be considered personal

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and individual in nature and will qualify for exclusion from tax provided under Section 1105(c)(1) of the Tax Law, provided the information contained therein is not incorporated into reports furnished to other persons.

DATED: February 18, 1994

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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