

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

TSB-A-98(57)S
Sales Tax
August 6, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S980409A

On April 9, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Cincinnati Bell Information Systems, 600 Vine Street, Cincinnati, OH 45202.

The issue raised by Petitioner, Cincinnati Bell Information Systems, is whether its data processing, remote access, and information storage services and related reports are subject to sales tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner provides billing and customer-care services to companies in the telecommunications, cable television, and Internet service provider industries. Petitioner primarily serves its customers by processing data and creating bills using proprietary software. The raw data from which the bills are calculated is provided by Petitioner's customers. Petitioner processes this raw data through its computer program which creates new data suitable for generating individual bills. For this service, Petitioner charges a monthly processing fee based on the number of accounts processed. Petitioner also generates management reports based on the processed data. Charges for management reports are billed on a per report basis.

Petitioner's customers have remote access to the processed data via terminals connected to computers owned by Petitioner. Customers using remote access are able to view the processed data and request ad hoc reports. Charges for remote access are based on the number of queries the customer performs and/or the amount of time the customer's terminal is connected to Petitioner's computer. The customer is also generally charged a separate information storage fee.

Petitioner has long-term written agreements with all of its customers. Under the terms of these agreements all information disclosed to Petitioner is considered proprietary and confidential and cannot be disclosed to outside parties.

Applicable Laws and Regulations

Section 1105(a) of the Tax Law imposes tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.-- ... there is hereby imposed and there shall be paid a tax ... upon:

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(c) 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, 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, and excluding meteorological services.

Opinion

Petitioner provides billing and customer-care services to companies in the telecommunications, cable television, and Internet service provider industries. Petitioner primarily serves its customers by processing data and creating bills using proprietary software. The raw data from which the bills are calculated is provided by Petitioner's customers. Petitioner processes this raw data through its computer program which creates new data suitable for generating individual bills. Petitioner also generates management reports based on the processed data. Petitioner's customers also have remote access to the processed data via terminals connected to computers owned by Petitioner. Customers using remote access are able to view the processed data and request ad hoc reports. The information disclosed to Petitioner by its customers is considered proprietary and confidential and cannot be disclosed to outside parties.

The billing and customer-care services Petitioner provides to its customers whereby Petitioner processes raw data provided by its customers through a computer program to create new data suitable for generating individual bills are not among the enumerated services subject to tax under 1105(c) of the Tax Law. See CyCare Systems, Inc., Adv Op Comm T&F, March 22, 1993, TSB-A-93(18)S. Therefore, the monthly processing fee charged by Petitioner in connection with the number of accounts processed is not subject to tax. Further, the fee charged for generating management reports which are personal and individual in nature and which are not or may not be substantially incorporated in reports furnished to other persons will not be subject to sales tax.

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The fees paid by customers for remote access to the processed data are not subject to tax, assuming the accessed data is personal and individual in nature and is not or may not be substantially incorporated in reports furnished to other persons. See Northeastern Computer Services, Adv Op Comm T&F, June 24, 1988, TSB-A-88(33)S. In addition, fees charged for storing such data are not subject to tax.

DATED: August 6, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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