

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

TSB-A-99(37)S
Sales Tax
July 27, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S981119A

On November 19, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Cincinnati Bell Information Systems, Inc., 600 Vine Street, Cincinnati, Ohio 45201.

The issue raised by Petitioner, Cincinnati Bell Information Systems, Inc., is whether its separately stated charges for the following components of its billing and customer-care services are subject to sales or compensating use tax:

- (1) Preparing bills, including a subscriber charge for printing, formatting and processing of data and separate charges for bill stock, forms and envelopes.
- (2) Supplementary reports, microfiche or tapes which are above and beyond those initially provided at the time of the original bill preparation.
- (3) Reimbursed handling, freight and delivery expenses which are incurred in conjunction with the performance of its services and passed through to its customers.
- (4) Stuffing envelopes and postage reimbursement on mailings both into and outside of New York State.

Petitioner submitted 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 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 creates bills and, in turn, charges customers a subscriber charge which covers the printing, formatting and processing of the information, and separately charges for bill stock, forms, envelopes and envelope stuffing. Petitioner also generates reports, microfiche, tapes, etc. for use by its customers in evaluating account and billing information.

Petitioner passes through to its customers certain costs, such as handling and freight/delivery charges, which are incurred when performing its services. Petitioner also charges its customers for postage fees it incurs when delivering billings to the U.S. Postal Service for ultimate destinations

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both within and without New York. All bills are mailed from locations outside New York. All purchases of bill stock, forms and envelopes by Petitioner are made outside New York.

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 Law and Regulations

Section 1101(b) of the Tax Law states, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery is provided by such vendor or a third party. . . .

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. . . .

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

The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

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Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services.

Section 1110 of the Tax Law provides, in part:

(a) Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail . . .

Section 526.5 of the Sales and Use Tax Regulations provides, in part:

* * *

(e) *Expenses.* All expenses . . . incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts.

Example 1: A photographer contracts with a customer to furnish photographs at \$50 each in addition to expenses.

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|------------------------------------|----------|
| The customer is billed as follows: | |
| Photographs(2) | \$100 |
| Model fees | 60 |
| Meals | 10 |
| Travel | 25 |
| Props(Flowers) | <u>5</u> |
| Total due | \$200 |
| Receipt subject to tax is \$200 | |

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 customer furnished raw data, from which bills are calculated, through its own computer program which creates reformulated data suitable for generating individual bills. After producing the bills, Petitioner inserts them in envelopes and delivers them to the U.S. Postal Service for ultimate destinations both within and outside of New York. Petitioner passes certain costs incurred in performing this part of its service, such as postage, handling and freight/delivery charges, through to its customers.

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Billing services which pertain to the preparation of customer account statements by processing raw data from which the bills are calculated are not among the enumerated services subject to tax under Section 1105(c) of the Tax Law (see Cincinnati Bell Information Systems, Adv Op Comm T&F, August 6, 1998, TSB-A-98(57)S; CyCare Systems, Inc., Adv Op Comm T&F, March 22, 1993, TSB-A-93(18)S; Datamedic Corp., Adv Op Comm T&F, June 10, 1991, TSB-A-91(58)S). Accordingly, the subscriber charge described in Item (1) which includes the printing, formatting and processing portions of Petitioner's service is not subject to sales or compensating use tax.

Also described in Item (1) are charges for bill (paper) stock, forms and envelopes, which Petitioner shows separately on its customer billings. Petitioner's transfer of these items to its customer in connection with its billing service is not a taxable retail sale (see EMCON, Adv Op Comm T&F, December 16, 1996, TSB-A-96(79)S; Northeastern Computer Services, Inc., Adv Op Comm T&F, June 24, 1988, TSB-A-88(33)S). Therefore, Petitioner's separate charges to its customer for the bill stock, forms and envelopes are not subject to sales or compensating use tax. However, if Petitioner transfers such materials to a customer in connection with a taxable retail sale of tangible personal property, as described below in Item (2), Petitioner's receipts from its customer would be taxable receipts under the definition of "receipt" provided in Section 1101(b)(3) of the Tax Law and Section 526.5(e) of the Sales and Use Tax Regulations; and Petitioner may purchase such materials for resale.

With regard to Item (2), Petitioner generates reports, microfiche, tapes, etc. for use by its customers in evaluating account and billing information. The reports are generated from information Petitioner develops and to which Petitioner alone has access, and are customized to each customer's needs. Petitioner is prohibited from incorporating this information into reports for outside parties pursuant to the long-term written agreements Petitioner has with each of its customers. Such 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 are not subject to sales tax (Cincinnati Bell Information Systems, *supra*). However, if Petitioner supplies additional copies to its customer, separate and apart from the sale of the billing services, whether such copies are prepared by rerunning or continuous running of the same computer program or by duplicating onto a medium different from the original, e.g., microfiche or tapes, all charges for such additional copies, including delivery charges and expenses, are subject to sales and compensating use taxes under Sections 1105(a) and 1110(a) of the Tax Law, when Petitioner supplies the medium for the copies (see EMCON, *supra*; Northeastern Computer Services, Inc., *supra*).

Concerning Item (3), when Petitioner makes a nontaxable sale as described in Item (1) above, the amount charged to its customers, including reimbursed expenses for handling, freight and/or delivery, is not subject to tax. On the other hand, when Petitioner makes a taxable sale as described in Item (2) above, amounts attributable to reimbursed expenses are includable as taxable receipts, under the definition of "receipt" provided in Section 1101(b)(3) of the Tax Law and Section 526.5(e)

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of the Sales and Use Tax Regulations (see STS Systems, Ltd., Adv Op Comm T&F, November 5, 1998, TSB-A-98(73)S; Salomon & Leighteb, CPA's, LLP, Adv Op Comm T&F, July 23, 1997, TSB-A-97(44)S).

With regard to Item (4), Petitioner's charges for stuffing envelopes and postage reimbursement on mailings both into and outside of New York State in connection with its billing services are not subject to tax. However, all such charges made in conjunction with the taxable sale of additional report copies mailed into New York, as described in Item (2), are subject to tax.

DATED: July 27, 1999

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

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