

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

TSB-H-80 (191) S
Sales Tax
October 9, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800630A

On June 30, 1980, a Petition for Advisory Opinion was received from Matthew Bender & Company, Inc., 1275 Broadway, Albany, New York 12201.

The issue raised is whether certain computer equipment, including both hardware and software, used by Petitioner in the production of books is subject to the New York State and Albany County sales and use taxes.

Petitioner is in the business of publishing legal texts and treatises. Petitioner employs computer equipment to produce and edit manuscripts on magnetic tapes. The tapes as so prepared are sent to a compositor for use in producing the final product. In addition to the computer hardware involved, Petitioner uses software developed specifically for its operations.

Section 1105(a) of the Tax Law imposes a tax on the "...receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Section 1110 of the Tax Law imposes a compensating use tax on the use of such property within this state except to the extent subjected to sales tax under the Tax Law. Similar local taxes have been imposed by Albany County. Local Laws, 1967, No. 3 of County of Albany. Section 1115(a) (12) of the Tax Law provides for an exemption from New York State sales and use taxes with respect to "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property. . .for sale, by manufacturing...but not including parts with a useful life of one year or less, or tools or supplies used in connection with such machinery, equipment...." The exemption provided for under Albany County's sales and use tax law is applicable to "...tangible personal property for use or consumption directly and predominantly in the production of tangible personal property... for sale, by manufacturing...." Tax Law, §1210(a) (1).

Inasmuch as the computer hardware in question is used exclusively in the production of books for sale, it meets the requirements of both of the exemption provisions quoted above. Software which is specifically tailored to fit a customer's specific data processing requirements is deemed to constitute intangible personal property and is thus not subject to State and local taxes on receipts from the sale of, or on the use of, tangible personal property. Inasmuch as the software at issue was developed specifically for Petitioner's use, the same constitutes intangible personal property for purposes of New York State and Albany County sales and use taxes.

Accordingly, the computer equipment in question, both hardware and software, described by Petitioner is not subject to either the New York State or Albany County sales and use taxes.

DATED: September 24, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau