

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

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Sales Tax Section
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STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
TAXPAYER SERVICES DIVISION

TECHNICAL SERVICES BUREAU BULLETIN

COMPUTERS

At recent public meetings of the New York State Tax Commission, the question of sales tax application to receipts from the sales of computer programs, computer programming services, electronic data processing equipment, timesharing and other data processing services were reviewed and the following decisions were reached:

1. Electronic Data Processing Equipment - Section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale of tangible personal property. Section 1105(c)(3) taxes services to tangible personal property which involve installation, or maintenance, servicing, or repairing of such property. Sale, as defined in section 1101(b)(5), includes any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means for a consideration. All sales, rentals, installation, servicing, maintaining or repairing of computers*, and peripheral equipment, commonly referred to as "hardware," are subject to the appropriate New York State and Local Sales Taxes pursuant to sections 1105(a) and 1105(c)(3) of the Tax Law.

Examples of Hardware

Central Processing Units	Panels	Security Monitors
Card Punch Machines	Data Entry Equipment	Flexowriters
Card Readers	Unit Record Equipment	Decollators
Verifiers	Point of Sale Devices	Data Storage Devices
Sorters	Terminals (video and hard copy)	(e.g. disc drives,
Card Converters	Modems	tape drives)
Collators	Electronic Message Scramblers	Blank Cards, Discs and Tapes
Printers	Bursters	

*For purposes of this bulletin, the internalized instruction code which controls the basic operations (i.e., arithmetic and logical) of the computer causing it to execute instructions contained in application and system programs, is an integral part of the computer. It is not normally accessible nor modifiable by the user. Such internal code system is considered part of the hardware and is taxable. The fact that the vendor does or does not charge separately for it is immaterial.

2. Software - 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. Preparation 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.

Software, meeting the above criteria, whether placed on cards, tape, disc pack or other machine readable media, or entered into a computer directly, is deemed to be intangible personal property for sales tax purposes, and as such its sale is exempt from New York State and Local Sales and Use Taxes. Software or programs which do not meet the criteria are subject to tax. The person selling exempt software is required to pay the applicable sales or use tax on any tangible personal property transferred to the customer in connection with the exempt service. In addition, the hardware, utility services and supplies used to develop the exempt software are not eligible for any sales tax exemptions.

Examples

- A. An exempt applications program sold in machine readable form such as keypunched cards, magnetic tape (with or without charts and instructions on its use) or discs is deemed to be intangible personal property. As intangible personal property, its sale, including lease or license to use, is not subject to New York State and Local Sales Tax.
 - B. A computer manufacturer sells or leases a computer containing exempt system programs. The sales invoice rendered to the purchaser separately states a reasonable charge for the system programs. The separately stated charge for such computer software is exempt from tax.
 - C. A company leases a computer with exempt application programs. The monthly billing shows one charge. The entire monthly charge is subject to tax.
 - D. A manufacturer sells or leases equipment which, in addition to recording transactions and issuing receipts, is capable of transmitting inventory and sales information by use of an application program to a central computer. Sale of such equipment is a sale of tangible personal property except to the extent of the exempt applications program option which may be purchased as a separate item and is separately billed to the customer as a software addition to the tangible property. If the customer does not have this option, the application program will be viewed as part of the hardware and taxed accordingly.
 - E. A software supplier manufactures prepackaged programs for use with home television games or other personal computer equipment. The programs are marketed through retail stores, and the programs are fully usable by customers without modifications. In selecting or preparing the program, the supplier does not perform a detailed analysis of the customer's requirements. The program is viewed as tangible personal property for sales tax purposes.
3. Systems and programming services - Services involved in the analysis, design and programming of an electronic data processing system are exempt, whether the services are used for the initial development or modification of the computer software (as defined in paragraph 2) or the data processing system. A person providing the preceding exempt services for his customers is subject to the applicable sales or use taxes on all purchases of tangible personal property and services used to provide such services, notwithstanding the fact some part of the property may later be transferred to the customer with the exempt service.

Examples

- A. A programmer is sent to a customer's location to analyze or design the program to solve a problem. After the program is written, it is keypunched by the customer and introduced by the customer into his own computer system for use. The sale made is regarded as a service not subject to New York State and Local Sales Tax.

B. All programming services to modify or update existing software, to meet additional processing procedures or new procedures being employed by the user of the software, are regarded as a service not subject to New York State and Local Sales Tax.

4. Timesharing - The charges made to customers for the use of a computer, which the customer has access to through a remote terminal device, are not deemed to be a taxable transfer of possession of the computer. However, all or part of the transaction may be taxable according to the type of information provided (see paragraph 5 below). The rental charge for the terminal device has been and continues to be taxable irrespective of the tax status of the information provided.

Part 526.7(e)(4) of the Sales and Use Tax Regulation is being amended to reflect the above position. The following material is in the amended regulation -

(4) It is not essential for a transfer of possession to include the right to move the tangible personal property which is the subject of a rental, lease or license to use.

Example 8: A corporation contracts with a computer center to use the computer on the center's premises for 10 hours weekly. The corporation provides its own operator and its own materials. During the 10 hour period, no one else may use the machine. This transaction, commonly known as the sale of raw time, constitutes a transfer of possession, pursuant to a rental, lease or license to use, which is a sale subject to tax.

Example 9: A corporation contracts with a computer center to use the computer on the center's premises for 10 hours weekly. The corporation provides its own materials and the computer center provides and directs the operator. During the 10 hour period, no one else may use the machine. In this case, there is no transfer of possession to the corporation as it has no control over the operation of the computer. However, the transaction may be taxable based on the information provided to the customer.

Example 10: A corporation contracts with a computer center for access time on the computer center's equipment through the use of a terminal located in the corporation's office. The terminal is connected to the computer by telephone. The corporation's access to the computer through the terminal is not deemed to be a transfer of possession of the computer subject to tax. However, the transaction may be taxable based on the information provided to the customer.

Cross-reference: See section 527.3 of this Title for taxable status of information services.

5. Data Processing Services - Information Services- Information services are commonly provided by data processing centers. An information service may consist of a data processing company using its own facilities to process customer data to produce information. The data may be provided to the data processing company in source document form, as machine readable media, or entered directly into the company's computer facilities via devices located at the customer's premises. Output may be in the form of reports on paper or other media, or may be transmitted electronically to the customer's site.

Information services are subject to tax (section 1105(c)(1)), unless the information output (paper or other media) is:

- (1) personal or individual in nature to the recipient, and
- (2) the data processing company cannot or may not incorporate a substantial portion of the same information in reports which it furnishes to other persons.

The fact that the customer is billed for each of the steps required to perform the service will not alter the tax application, nor will the incidental transfer of some tangible personal property affect the taxability, i.e. the sales tax status of the information service provided to the customer will determine the taxability of the total charge, (taxable or exempt under section 1105 (c)(1)) notwithstanding the fact that the data processing company may bill an additional charge for program changes made by the data processor in order to provide the customer with information subject to tax under section 1105(c)(1). A separately stated charge for program modifications is an element of cost and not an exempt service within the scope of paragraph 3 above. If an information service was

taxable prior to the promulgation of Regulation 526.7(e)(4), nothing in the Tax Commission's November 15, 1977 decision exempting software and programming services was intended to change the status of the charges made for such taxable information service.

Processing of the following data is an example of a taxable information service:

Stock Quotation service

Processing of the following data are examples of exempt information service:

Accounting Reports
Accounts Receivable
Accounts Payable
Sales Analysis
Inventories
Payrolls
Tax Reports

6. Data Conversion Services -

This bulletin has not addressed the question of data conversion services (key punching, tape updating, etc.) which will be the subject of the next release. All persons wishing to submit information, outlining the basis which they believe taxes or exempts such services from New York State and local sales taxes, may on or before 4/1/78 send their comments to:

Commissioner Thomas Lynch
Department of Taxation and Finance
Building 9
State Campus
Albany, NY 12227

In order that the material may be properly evaluated, include a complete description of each data conversion service mentioned in the correspondence.

7. Refund or Credit Procedure -

A. Tax Paid on Assessment:

An application must be filed within the three year Statute of Limitations, or within two years of the date the tax was paid on an assessment that was issued in accordance with a consent filed.

The application should contain documentation from the assessment and workpapers to support the amount claimed.

B. Tax Paid by Customer to a Vendor:

A claim must be filed within three years of the date that the tax was payable to the Tax Commission. The application can be supported by:

1. A worksheet itemizing each invoice paid, providing the following information:

- | | | | |
|----|----------------|----|---|
| a. | Sellers name | d. | Total amount of the exempt billing on which the refund or credit is claimed (excluding sales tax) |
| b. | Invoice number | e. | Sales tax being claimed |
| c. | Invoice date | f. | Description of the item being purchased |

During the audit of the claim a test check will be done to verify the accuracy of the worksheets.

2. All invoices on which the claim is based may be submitted. If the description of the item being purchased is not clear, the claimant should provide an additional explanation.

C. Claims for Tax Refunded to a Customer:

Refund must be made to the customer prior to filing of an application. A claim must be filed within three years of the date that the tax was payable to the Tax Commission. The application can be supported by:

1. A cover worksheet showing:

- a. Name and address of the customer
- b. Date of the refund
- c. Amount of the refund

A subsidiary schedule for each customer showing:

- a. Invoice number
- b. Invoice date
- c. Total amount of exempt billings on which the refund or credit is claimed (excluding sales tax)
- d. Sales tax being claimed
- e. Description of the item

The worksheet will be test checked and the claimant will be required to produce copies of the original billings and refund checks.

- 2. Copies of the original billings (by customer) may be submitted along with a copy of the refund check. A summary schedule should be included.

Your completed refund application and any questions should be directed to:

N.Y.S Department of Taxation & Finance
Sales Tax Section
Central Office Audit Bureau
The State Campus
Albany, NY 12227