

Authority of the Department of Taxation and Finance
To Examine a Vendor's Computer Records

The Department of Taxation and Finance considers all machine-sensible records produced by an automated accounting system to be records within the meaning of section 1142.5 of the Tax Law, and such records must be retained for as long as the contents may become material in determining the accuracy of any return required by any part of Articles 28 and 29. Section 533.2 of the Sales and Use Tax Regulations and TSB-M-81(9)S clearly define these requirements.

The following is the policy of the Department with respect to its authority to have access to machine-sensible data (computer files) in the performance of sales tax audits:

The Tax Commission is entitled to examine all records which are relevant and material to its inquiry, and in a form that is convenient to its investigation. The Commission also has the right to refuse to examine records in one form when a more convenient form exists. In those instances where the vendor maintains or processes records on an electronic data processing system, the Department reserves the right to have such records presented in machine-sensible form, and the vendor or user must furnish access to such equipment or records, as is necessary for the Department to carry out its standard audit procedures. Where a request for such material is denied, the Commission has the authority to subpoena such data.

This policy is based on the sections of the New York State Sales and Use Tax Law and Regulations cited below.

Section 1135(a) of the Tax Law - "Every person required to collect tax shall keep records of every sale or amusement charge or occupancy and of all amounts paid, charged or due thereon and of the tax payable thereon, in such form as the tax commission may by regulation require"

Section 1142.5 of the Tax Law - gives the Tax Commission the authority "To require any person required to collect tax to keep detailed records of all receipts, amusement charges, dues or rents received, charged or accrued, including those claimed to be nontaxable, and also of the nature, type, value and amount of all purchases, sales, services rendered, admissions, memberships, occupancies, names and addresses of customers, and other facts relevant in determining the amount of tax due and to furnish such information upon request to the Tax Commission;"

Section 1143(a) of the Tax Law - ". . . The Tax Commission shall have power to subpoena and require the attendance of witnesses and the production of books, papers and documents to secure information to the performance of its duties hereunder and of the enforcement of this article and to examine them in relation thereto, . . ."

Section 533.2(a)(2) of the Regulations - ". . . In those instances where the vendor or user maintains or processes records on an electronic data processing system, the Department reserves the right to have such records presented on machine-sensible form, and the vendor or user must furnish access to such equipment or records as is necessary for the Department to carry out its standard audit procedures."

Section 533.2(d)(5) of the Regulations - "If a vendor has signed a record retention agreement with the Internal Revenue Service, the vendor must make a copy of such agreement available upon request."

Section 533.2(d)(6) of the Regulations - "Vendors must maintain and make available documentation which will provide a meaningful description of their accounting system, whether manual or automated, and the records contained herein. This documentation must be adequate to explain the meaning of all entries on the records."

Section 533.2(f)(4) of the Regulations - "Records prepared by automated data processing system. All punched cards, magnetic tapes, discs, and other machine-sensible data media used for recording, consolidating and summarizing accounting transactions related to the taxpayer's automatic data processing system, are records within the meaning of section 1142.5 of the Tax Law and, . . . all such machine-sensible data must be retained so long as the contents may become material in determining the accuracy of any tax return required by article 28 or pursuant to the authority of article 29"

Furthermore, computer tapes have been held to be books, papers, records or other data within the meaning of section 7602 of the Internal Revenue Code, according to the decision reached in the United States Court of Appeals case United States v. Davey 543 F2d 996 (1976). Therefore, vendors who are required to make their records available to the Tax Commission for inspection must include computer tapes, discs, cards, printouts, etc. in such records.