**New York State Department of Taxation and Finance**

**Taxpayer Services Division
Technical Services Bureau**

TSB-A-82(10)S
Sales Tax
March 9, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION          PETITION NO. S811207C

On December 7, 1981, a Petition for Advisory Opinion was received from Encode, Inc., 112 Parker Street, P.O. Box 924, Newburyport, Massachusetts 01950.

The issue raised is whether Petitioner's purchases of certain service contracts on behalf of the end users of its computer programming systems are subject to tax under Article 28 of the Tax Law.

Petitioner is a manufacturer of computer programming systems for numerically controlled machine tools. Petitioner sells these systems, exclusively to machine tool distributors, who resell the systems to end users. Petitioner invoices the distributor, from whom it receives a properly executed Resale Certificate.

To insure proper initial performance of its systems, Petitioner includes a 60 day service contract with Data General Corporation. Petitioner pays for the contract, the cost of which is passed on to the end user as part of the price of the system.     The cost of the contract is invoiced by Petitioner to the distributor and by the distributor to the end user.

Section 1105(c)(3) of the Tax Law imposes a sales tax on the "receipts from every sale, except for resale, of the service of "servicing or repairing tangible personal property not held for sale in the regular course of business." The Sales and Use Tax Regulations provide that the purchase of a maintenance or service contract is itself such a taxable transaction. 20 NYCRR §§527.5(c)(1); 527.5(d)(4). In the present instance, however, inasmuch as the contract is purchased by Petitioner for resale, no tax is due on its purchase. Petitioner may avail itself of this exclusion by supplying Data General Corporation with a properly completed Resale Certificate (Form ST-120) at the time of purchase.

DATED: February 22, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Service Bureau