

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

TSB-A-88(33)S  
Sales Tax  
June 24, 1988

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S871027B

On October 27, 1987, a Petition for Advisory Opinion was received from Northeastern Computer Services, Inc., 6464 Ridings Road, Syracuse, New York 13206.

The issue raised is the tax status, under Article 28 and 29 of the Tax Law, of on-line computer services and related processing of data provided by the Petitioner to financial institutions.

Petitioner's customers include savings banks, savings and loan associations and federal credit unions. These organizations own or lease and maintain teller terminals and transmission lines for accessing the central processing unit and peripheral devices owned by the Petitioner by means of either interconnecting common carrier, telephone lines, cables or wireless transmission.

Petitioner's data processing agreement with a customer provides, initially, for data conversion of customer records to meet processing specifications. Conversion charges include training of customer's key personnel and out-of-pocket charges incurred by the processor, as well as an additional charge for conversion if records are not in machine readable form. After conversion, Petitioner provides, on-line with the customer's in-put terminals, main computer storage and instruction programs for updating the stored data. Depositors' savings accounts, mortgage and consumer loan accounts, checking accounts and IRA/Keogh deposits are maintained in this manner.

From this accumulation of data, Petitioner, with the aid of the appropriate computer programs, daily, monthly, quarterly or annually prepares paper printouts of various transaction reports including posting journals, account registers, trial balances and management reports and analyses.

In addition to producing transaction reports, Petitioner periodically calculates and prints checks for customer payments of interest earnings and vacation clubs.

Petitioner also prepares customer notices, such as earnings reports, mortgage escrow analyses, delinquency notices, certificate maturity letters and, at the customer's request, auditor confirmation letters.

Other special jobs performed at the customer's request include production of payment history index cards, mailing labels, microfiche masters and copies, microfilm, and mortgage bills and coupons.

It is the customer's responsibility to arrange and pay for delivery of data and pickup of reports.

Processing charges are billed monthly; they are calculated by multiplying the total number of accounts in computer storage at the end of the month for each account type by the rate set down in the fee schedule for the applicable service. In addition the customer is billed, monthly, a data line fee for access time to the central processing unit, and a separate charge for microfiche production.

Petitioner contends the services at issue are information services excludable from tax pursuant to Section 1105(c)(1) of the Tax Law.

Sales tax is imposed on the receipts from every retail sale of tangible personal property, except as otherwise provided in the statute. Tax Law §1105(a). Sales of services, however, are taxed only if enumerated in Section 1105(c) of the Tax Law. Services so specified include (1) "The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons. . . ." (2) "Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed."

#### Accounting and Bookkeeping Services

The Sales and Use Tax Regulations explain that the preparation of payrolls for customers by computer service companies is not a taxable information service. 20 NYCRR 527.3(b)(2), Example 3. Furthermore, Tax Department policy has interpreted the same exclusion to apply to the preparation of tax forms, the keeping of journals, accounts and ledgers and the rendering of financial statements, whether manual or computer assisted. See Technical Services Bureau Bulletin 1978-1(S), Computers. Charges for depositor payment checks, auditor confirmation letters, IRS reporting tapes and customer account statements qualify for exemption under the regulations and rules quoted in this paragraph.

If the customer notices and statements are mailed by the Petitioner, charges for this service are subject to tax according to the rules for printers and mailers set down in Department of Taxation and Finance Publication 842 (4/84). See also George Silver, State Tax Commission Advisory Opinion, April 24, 1986, TSB-A-86(15)S.

#### Duplicating

When computer printout reports and tabulations are not taxable, the exemption includes all copies of a multi-carbon original printing. Additional copies are taxable, whether prepared by rerunning or continuous running (looping) the same program or by printing similar programs simultaneously or by duplicating onto a medium different from the original (e.g., disc, tape, microfiche, microfilm). When the Petitioner supplies the medium for copies, the charge for

the job is taxable as the sale of tangible personal property (Tax Law §1105[a]), while processing upon the property of the customer is taxable under Tax Law §1105 (c) (2).

#### Data Conversion - Information Services

The tax status of documents prepared by the Petitioner that are not considered accounting books or records, because they are not required for the preparation of financial statements, depends on whether the completed job constitutes data conversion or the furnishing of information.

If data are arranged to the purchasers specifications on cards, discs, tapes or paper printouts without creating new information but merely a change in form, the taxability is as follows:

1. When the vendor furnishes the medium on which the purchaser's source data is recorded, the sale is of tangible personal property taxable in accordance with the provisions of Section 1105(a) of the Tax Law.
2. When the customer supplies the medium upon which the printing or encoding is performed, a sale of a fabrication service is made and the service is taxable pursuant to Section 1105(c)(2) of the Tax Law. See, Taxability of Major Data Entry Techniques, TSB-M-81(3)S.

Thus, Petitioner is selling tangible personal property rather than an information service when information already in the customer's possession is merely converted from "one form or medium to another, without interpreting or recasting it, so that the form of the information changes but not the intelligence contained therein". (Finserv Computer Corp. v. Tully, 463 N.Y.S. 2d 924, affd 61 N.Y.2d 947). Such taxable jobs would include the furnishing, on a medium supplied by the Petitioner, of the initial data conversion, microfilm, labels, mortgage coupons and index cards, as well as reports by census tract and zip code or alphabetical name and address listings. With respect to the latter, see Concept IV Computer Systems, State Tax Commission Advisory Opinion, April 26, 1984, TSB-A-84(18)S.

Conversely, the preparation of a report is deemed an information service if it requires the Petitioner to process data through a computer system under the control of a program for new information, rather than merely render back information supplied by the customer in a more convenient form.

A report must qualify as an information service before its eligibility for the exclusion contained in Tax Law §1105(c)(1), supra, can be established.

The Advisory Opinion function is limited to setting forth the applicability of pertinent statutory and regulatory provisions to a specified set of facts. The information contained in the Petition is not sufficiently detailed for a final classification, for tax purposes, of each report, tabulation or product Petitioner furnishes under a data processing agreement. This determination must necessarily be made by administrative procedure.

Materials and Supplies

It is further noted that Petitioner's monthly customer billings show a charge for "paper use" and for envelopes. When purchasing such materials, Petitioner must pay sales tax if they are to be used to perform nontaxable services. However, purchases of materials actually transferred to the customer in connection with a service subject to tax are not taxable if Petitioner gives a properly completed Resale Certificate (Form ST-120) to the supplier. Tax Law § 1101(b)(4)(i)(B). See also Norstar Leasing Services, State Tax Commission Advisory Opinion, February 25, 1987, TSB-A-87(12)S. Under the latter circumstances, Petitioner must collect tax from the customer on the taxable service and on the material resold in conjunction with it, whether or not a separate charge is made for each of these components.

Data Line Charges

Petitioner's customers also pay a data-line charge, billed monthly, based on the time their terminals are connected to the central processing unit (CPU). Access to a CPU through a remote terminal is not considered a taxable transfer of possession of the computer. 20 NYCRR 526.7(4) and (5). However, since electronic readout or display of intelligence is furnishing of information "in any other manner" within the meaning of Tax Law § 1105[c][1], (20 NYCRR 527.3[a][1]), Matter of Murphy Heating Service, Inc., et al. v. Chu, et al., 124 AD2d 907, 908, all or part of an access charge may be taxable according to the type of information provided.

Petitioner's customers' terminals are used for real-time updating of depositor and loan accounts and for retrieval of previously stored data concerning these same accounts. Thus, the visual display of data received at a customer's terminal contains only the uniquely personal information to which the exemption in Tax Law § 1105(c)(1) has been held to apply (e.g. Matter of New York Life Ins. Co. v. State Tax Commission, 80 AD2d 675, affd sub nom. Matter of Metropolitan Life Ins. Co. v. State Tax Commission, 55 NY2d 758). Accordingly, the data-line charges are not subject to tax.

DATED: June 24, 1988

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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