

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

TSB-A-89 (44)S
Sales Tax
November 16, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890621B

On June 21, 1989 a Petition for Advisory Opinion was received from VidCode Inc., Suite 240, 55 Williams St., Wellesley, MA, 02181.

The issues raised are whether charges, incurred by Petitioner, VidCode Inc., for encoding television commercials and the charges to Petitioner's customers for monitoring television commercials is subject to sales tax.

Petitioner has been organized to enable television advertisers to more accurately and efficiently determine whether television commercials they have purchased have been broadcast at the time and in the form and market agreed to under contract. To this end, Petitioner has obtained from the Federal Communications Commission an exclusive right to use one line of the 525 that appear on a television screen, and it has developed a device that encodes on this line a signature which is unique to each commercial. This line appears above the visible portion of the screen. An independent party has been contracted to do the actual encoding on the master copy of the commercial, using Petitioner's equipment, at a cost to the company of \$35.00 per commercial.

Petitioner has also developed a device that can monitor all television broadcasts in a given market and record exactly what commercials have been broadcast, the time they were broadcast and the audio and visual quality of the commercial. Once set up, these monitoring devices operate automatically, without an operator on the premises. A central computer will be used to coordinate the information captured by these monitoring devices. Petitioner will earn its revenues by charging its customers a fee for the monitoring of the commercials. Petitioner furnishes its customers with weekly activity reports, containing the results of its monitoring activities. The reports indicate whether there was audio error, color error, video error, etc. in commercials when they were broadcast.

Petitioner makes no sales of tangible personal property, but in conjunction with its sale of monitoring services it must have the customer's commercial individualized by having a unique line of information encoded on the master copy. This encoding makes it possible for Petitioner's monitoring equipment to recognize the particular commercial. The charge made by Petitioner to its customers is for the monitoring of broadcast commercials and the issuance of reports to the customers indicating the results of such monitoring. No tangible property is conveyed.

Section 1105(c)(2) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the services of "[p]roducing, 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."

Section 527.4 of the Sales and Use Tax Regulations in relevant part states:

(d) "Processing is the performance of any service on tangible personal property. . .which effects a change in the nature, shape or form of the property."

* * *

(f) "When services enumerated in this section are rendered on property held for resale, the services are not taxable."

The service of encoding upon television commercials is a service upon tangible personal property not held for sale and is therefore subject to the tax imposed under Section 1105(c)(2) of the Tax Law. See: SOQ Broadcasting Corp., Dec St Tax Comm, May 23, 1985, TSB-H-85(154)S; Coopers & Lybrand, Advisory Op St Tax Comm, Oct. 24, 1986, TSB-A-86(43)S. Since petitioner is selling a monitoring service of which the encoding is a preliminary step, it is the consumer of the encoding service and is required to pay the sales tax on such service.

Section 1105(c) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the following services:

"(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... (Emphasis added).

Section 527.3 of the Sales and Use Tax Regulations in relevant part states:

"(a)...(2) The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service."

"(b)...(2) The sales tax does not apply to the receipts from the sale of information which is personal or individual in nature and which is not or may not be substantially incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed such information.

"Example 1. The report submitted by a private detective agency to its clients is a personal report, the charge for which is not taxable."

The reports furnished by petitioner constitute collecting, compiling and analyzing information within the meaning and intent of Section 1105(c)(1) of the Tax Law. However, the reports furnished are both personal and individual in nature and may not be substantially incorporated in reports

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furnished to other persons, and therefore the charges to Petitioner's customers for said reports are not subject to the tax imposed under Section 1105(c)(1) of the Tax Law. (See: Furtunato Sons Inc. Advisory Op St Tax Comm., July 28, 1986, TSB-A-86(30)S.)

DATED: November 16, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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