

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

TSB-A-92 (44) S
Sales Tax
May 29, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920206F

On February 6, 1992, a Petition for Advisory Opinion was received from Alan/Anthony, Inc., 145 Avenue of the Americas, 2nd Floor, New York, New York 10013.

The issue raised by Petitioner, Alan/Anthony, Inc., is whether the development and maintenance of a computer database of its client's membership is an information service which is "personal or individual in nature" within the meaning of the exclusion from tax contained in Section 1105(c)(1) of the Tax Law, and, therefore, not subject to sales tax.

Petitioner develops and maintains a computer database of the membership of an international nonprofit trade association. Information in the database comes solely from Petitioner's client in the form of correspondence, promotional brochures, and questionnaires completed by the trade association members.

Petitioner uses the information to update records in the database and provides the data to its client on floppy disks or in computer generated reports. The data and floppy disks are the property of the client.

Section 1105(c)(1) imposes sales tax on:

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 incorporate in reports furnished to other persons, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news. (emphasis added)

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 rendering back information supplied by the customer in a more convenient form. Northeastern Computer Services, Inc., Adv Op Comm T&F, June 24, 1988, TSB-A-88(33)S.

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

If data is arranged to the purchaser's specifications on cards, discs, tapes or paper printouts without creating new information but merely a change in form, where the vendor furnishes the

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medium on which the purchaser's source data is recorded, the transaction is a sale of tangible personal property taxable in accordance with the provisions of Section 1105(a) of the Tax Law. See, Taxability of Major Data Entry Techniques, TSB-M-81(3)S.

Where information already in a 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 there is a sale of tangible personal property rather than the sale of an information service. (Finserv Computer Corp. v. Tully, 463 N.Y.S. 2d 924, affd 61 N.Y.2d 947).

Accordingly, pursuant to Northeastern Computer Services, Inc., supra, Finserv Computer Corp. v. Tully, supra, and TSB-M-81(3)S Petitioner's sale of floppy disks or computer generated reports constitutes the sale of tangible personal property taxable in accordance with the provisions of Section 1105(a) of the Tax Law rather than an information service taxable pursuant to Section 1105(c)(1) of the Tax Law since Petitioner merely converts the information concerning membership supplied by its client 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.

DATED: May 29, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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