

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

TSB-A-93 (31)S  
Sales Tax  
May 5, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920127A

On January 27, 1992, a Petition for Advisory Opinion was received by Electronic Data Systems Corporation, 5400 Legacy Drive, Plano, TX 75024.

The issue raised by Petitioner, Electronic Data Systems Corporation, is whether the method Petitioner uses to determine sales tax on computers placed in customers' premises, which was the subject of a recent audit, would be an acceptable method to be used in the future.

Petitioner, is a wholly owned subsidiary of General Motors (hereinafter "GM"). Petitioner places its computers in GM premises and the computers are sometimes operated by the employees of Petitioner and sometimes by employees of GM and sometimes by both. Petitioner pays all taxes on hardware purchased or leased. The computer work done by Petitioner is done pursuant to fixed price and/or bundled billing contracts. Most computer services are bundled together. The equipment is owned or leased by Petitioner and the charges are recaptured in the bundles. Whenever Petitioner directly releases the tangible personal property to GM, Petitioner accrues/pays the sales taxes on the markup. The same methods would apply to maintenance contracts and taxable software. With respect to resales, Petitioner will collect the appropriate sales tax from GM or obtain the applicable exemption certificate such as the Manufacturer's exemption in New York State.

Section 2376.1(a) of the Commissioner of Taxation and Finance Regulations provides as follows:

Section 2376.1 General. (a) Definition and nature of advisory opinions. An advisory opinion is a written statement, issued pursuant to the provisions of this Part, setting forth the applicability to a specified set of facts of pertinent statutory and regulatory provisions relating to a tax administered by the Commissioner of Taxation and Finance. Advisory opinions are issued at the request of any person who is or may be subject to a tax or liability under the Tax Law or claiming exemption from such tax or liability, and are binding upon the commissioner with respect to that person only. Advisory opinions are issued on behalf of the commissioner by the director or the deputy director of the Technical Services Bureau, or the deputy director of the Taxpayer Services Division, to whom the commissioner's authority to issue advisory opinions is delegated. (emphasis added)

In Northeastern Computer Services, Inc., Adv Op Comm T & F, June 24, 1988, TSB-A-88(33)S the Commissioner held that "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

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purposes, of each report, tabulation or product Petitioner furnishes under a data processing agreement. This determination must necessarily be made by administrative procedure." (emphasis added)

Accordingly, pursuant to Section 2376.1 of the Commissioner of Taxation and Finance Regulations and Northeastern Computer Services, Inc., *supra*, an opinion as to the methodology Petitioner may use to determine the sales tax on computers placed in customers' premises as presented is not susceptible of determination in an Advisory Opinion.

DATED: May 5, 1993

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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