

**New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division**

TSB-A-03(4)S
Sales Tax
January 27, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S010829B

On August 29, 2001, the Department of Taxation and Finance received a Petition for Advisory Opinion from Matrix Imaging Solutions, Inc., 2221 Niagara Falls Boulevard, Niagara Falls, New York, 14304.

The issue raised by Petitioner, Matrix Imaging Solutions, Inc., is whether the sales tax applies to charges for the service of processing its clients' customer invoices and statements including charges for the processing of collection letters for collection agencies and their customers.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner processes its clients' customer invoices and statements including the processing of collection letters for client collection agencies and their customers. Data is transmitted to Petitioner from its clients on a daily basis. Each data transmission contains multiple records and each record contains information regarding a specific debtor, including dates, names, and addresses. Petitioner converts each record from the ASCII data format provided by its clients and adds them to its database driven data processing system. The data processing system uses a variety of custom-programmed applications written to match the record layouts provided by Petitioner's clients. Petitioner processes each record verifying that the letter request is valid for each individual debtor, based upon criteria established by its client. If records are found that do not meet the proper criteria, they are rejected and reported back to Petitioner's client. Petitioner's client is notified with a summary of all records imported so that the client can verify that all the data Petitioner received is correct.

Address information is extracted from each record and is verified against the USPS National Change of Address database (hereinafter NCOA) for addresses that have been changed or are determined to be undeliverable. If a new address is found, the debtor address record is updated in Petitioner's system with the new address. Petitioner notifies its client electronically of the new address so that the client can update its database. Any records found to have undeliverable addresses where no new address can be found are updated accordingly in Petitioner's system so that Petitioner takes no further action with these records. This information is also reported back to Petitioner's client.

Petitioner also analyzes phone numbers given to it for each account. Any accounts without phone numbers, or with phone numbers that are invalid, trigger a phone number search using USPS Phone Append service. Based on the address information from NCOA, a phone number may be found for a new address if one was found, or a valid phone number could be found for the original address if there was not an address change.

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Collection agencies must be licensed to send mail to certain states. There may be certain states that the client may be restricted from mailing to because they are not licensed or for other reasons. Each record is analyzed at this point in time to determine if there are any addresses that have been changed to a restricted state by NCOA or that somehow made it past earlier processing. If the notice is going to a restricted state, it is "killed" at this point and the client is notified electronically so that their records can be updated.

Once Petitioner has processed each address through the USPS NCOA and Phone Append services, it performs an address standardization using software licensed by the USPS. This software properly standardizes and formats the address and will look up the Zip+4 for the address as well as the 2-digit Delivery Point code and calculate the check-digit to give a complete destination-point barcode. The records are sorted based on USPS qualifications for automated mail processing and all appropriate paperwork necessary to submit a mailing to the USPS is generated by the software.

Certain states have additional requirements for special verbiage that must be added to a collection letter. At this point Petitioner adds any state-specific verbiage to the standard letters that have been requested for each account. For certain records, Petitioner performs the data-processing function of taking a generic letter request and personalizing it so that it does not look like the correspondence is from Petitioner's client, i.e., a collection agency, but from the customer of Petitioner's client.

Print stream files are generated that are sorted according to USPS specifications. These files are sent to Petitioner's printers creating hard-copy letters or customer invoices and statements that are inserted into envelopes ready to be mailed. The collection letters, invoices and statements are then mailed as first class mail per U.S. Postal Regulations.

Applicable Law

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1105(c) of the Tax Law imposes sales tax upon receipts from the sales, except for resale, of certain enumerated services.

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Section 1115 of the Tax Law provides, in part:

Exemptions from sales and use taxes.

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery or equipment. This exemption shall include all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas, and solution mining activities to the point of sale to the first commercial purchaser.

Opinion

Section 1105(a) of the Tax Law imposes a tax on the sales of all tangible personal property unless such property is specifically exempt or purchased by an exempt organization described in Section 1116 of the Tax Law. Services are not subject to sales tax unless they are specifically designated as being subject to tax under Section 1105(c) of the Tax Law.

Petitioner is engaged to compose and prepare its clients' collection letters, prepare clients' customer invoices and statements, and update its clients' mailing lists by verifying the addresses and telephone numbers its clients provide. In this capacity, Petitioner is required to perform research in order to determine that the language of the collection letters complies with state law and whether a state into which a letter is sent requires Petitioner's clients to possess a license, in which case Petitioner makes sure the client has the license. Petitioner's document preparation and verification services constitute clerical or secretarial services.

Since the services described by Petitioner do not constitute any of the enumerated services specified under Section 1105(c) of the Tax Law, the receipts from providing such services are not subject to sales tax. However, since Petitioner is not producing tangible personal property for sale, Petitioner's purchases of paper, ink, or other items used in providing these services are not purchased for resale, and are subject to the tax at the time of purchase. Likewise, Petitioner's

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purchases of machinery, equipment, parts, tools, and supplies used or consumed by Petitioner to perform these services for its clients are not exempt from tax under Section 1115(a)(12) of the Tax Law.

DATED: January 27, 2003

/s/

Jonathan Pessen
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Technical Services Division

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