

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

TSB-A-06(30)S  
Sales Tax  
December 8, 2006

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S060303A

On March 3, 2006, the Department of Taxation and Finance received a Petition for Advisory Opinion from Optimum Solutions Corp., 266 Merrick Road, Lynbrook, New York 11563. Petitioner, Optimum Solutions Corp., provided additional information pertaining to the Petition on April 5, 2006, and May 24, 2006.

The issue raised by Petitioner is whether the fees charged for Petitioner's "custom data extraction" services are subject to sales and use tax.

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

Petitioner is in the business of processing written documents such as surveys and questionnaires. Petitioner's clients, mainly market research companies, send Petitioner paper-based forms. Petitioner extracts the data on these forms and outputs the data to computer files. These computer files are sent to Petitioner's clients.

Petitioner's service is an automated scanning-based solution eliminating the need for manual data entry. When a paper survey is received, Petitioner uses high speed scanners to scan the paper survey form and convert the survey form to an electronic image. Once the image is stored, the paper survey form is no longer needed. After scanning, software designed by Petitioner specifically for the client reads the responses on the electronic image and outputs the information to electronic files. The information supplied by Petitioner is raw data. The raw data, once extracted, is delivered to the client in one of two methods. The first method is through the use of Petitioner's File Transfer Protocol (FTP) site. The files are uploaded, the client is notified, and the client downloads the file. The second method is by compressing (zipping) the files and sending them as attachments to an e-mail. These are the only methods of delivery. Market research companies use the raw data to compile reports, to analyze trends, and for other related business purposes.

Once a survey is scanned by Petitioner, an electronic image of the survey is captured and stored for Petitioner's use in creating the electronic file. While most clients do not require copies of the survey responses, occasionally a client may need to store the response information for a period of time. Storing the images on a disk and destroying the paper-based survey reduces storage costs for these clients. Having already scanned the images for its own use, Petitioner may provide a disk with the electronic images to the clients upon their request. There are few requests to provide a disk and there is no additional charge to the client as the cost of the disk and Petitioner's time and resources expended to provide it are minimal.

In addition to extracting data from a client's form, some clients request additional services from Petitioner. For a separate charge, Petitioner will provide data analysis. Petitioner uses the client's raw data to create tables in which the information is sorted and arranged according to the client's instructions. Petitioner does not write a report summarizing the data or draw conclusions with the data; it only delivers the requested tables of sorted data to the client.

The following is an example of how the services performed by Petitioner would apply to an automobile survey:

An automobile manufacturer wants to do a satisfaction study on new car purchasers. To gather impartial information, it contacts a market research company to perform the study. The market research company creates a customer survey questionnaire and mails the surveys to a list of new car buyers provided by the manufacturer. New car buyers are asked to complete the survey and return it to the market research company.

The market research company retains Petitioner for its services and sends the completed surveys to Petitioner. Petitioner creates a custom template using the blank survey questionnaire. Once the template is created, the surveys are scanned into the computer and electronic images of the completed survey are created. Petitioner uses proprietary software to process the scanned images. During processing, the computer takes the custom template survey and compares it to the completed survey. The new car purchaser's responses to the survey questions are electronically read and the data is output to a computer file. Once the data file is complete, Petitioner sends it to the market research company.

For this example, the client may also ask Petitioner to provide, in addition to the data extraction, a table created from the survey data that answers a specific question such as:

How many respondents between 35 and 50 years of age who own two or more cars read the Sunday *New York Times*?

### **Applicable law and regulations**

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

\* \* \*

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax....

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 . . . upon:

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

\* \* \*

(c) 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,...

Section 527.3 of the Sales and Use Tax Regulations provides, in part:

(a) Imposition. (1) Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from the service of furnishing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any manner such as by tapes, discs, electronic readouts or displays.

(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) Exclusions. (1) Sales tax does not apply to receipts from sales of information services which are for resale as such.

(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.

## **Opinion**

Petitioner is in the business of processing written documents such as surveys and questionnaires, mainly for market research companies. Petitioner scans a client's paper-based survey forms and converts them to an electronic image. Petitioner then extracts data from the images of the paper surveys, and stores the data in a computer file. Petitioner delivers the data files to clients via attachments to an e-mail or by sending the client a notification that a file with its data can be downloaded from Petitioner's FTP site.

When Petitioner scans a client's paper-based survey forms, extracts data and outputs it to an electronic data file that is delivered to clients electronically, Petitioner is providing a service that is not included within the services enumerated in section 1105(c) of the Tax Law. Therefore, the charges to clients for this service are excluded from sales tax. When Petitioner provides this service, it is not rendering an information service since Petitioner neither integrates nor recasts the information so that the client is given back some new information or some new significant intelligence concerning the data furnished. Rather, Petitioner converts the information received from the 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. See *Finserv Computer Corp. v Tully*, 94 AD2d 197, affd 61 NY2d 947. It should be noted that if Petitioner delivered the data files to its clients in tangible form instead of exclusively electronically as is Petitioner's practice, the conclusions reached in this Opinion might be different. See *Finserv*, supra; *Moore Business Forms*, Adv Op Comm T & F, Feb 15, 1995, TSB-A-95(6)S.

Occasionally a few of Petitioner's clients need to retain copies of the survey forms. When requested by the clients, Petitioner may provide copies of the images of the survey forms that Petitioner scanned in performing the nontaxable services discussed in the preceding paragraph. Petitioner copies the images on a disk that it gives to the customer. Petitioner makes no additional charge since the cost of the disk and Petitioner's time and resources expended to provide the disk are minimal. Disks furnished to clients are tangible personal property, and if the disks were sold to a client for consideration, such sales would be subject to sales tax under section 1105(a) of the Tax Law. However, since there are no additional charges to the client and disks are not being sold, the disks are being provided as a courtesy to a small number of clients as a mere incident to the nontaxable services discussed in the preceding paragraph. It should be noted that Petitioner's purchases of disks are not purchases for resale, and Petitioner is required to pay sales tax on its purchases of the disks. See section 1101(b)(4)(i) of the Tax Law.

TSB-A-06(30)S  
Sales Tax  
December 8, 2006

The data analysis service that Petitioner offers for a separate charge organizes a client's data into tables, with the data sorted and arranged according to the client's instructions. Petitioner does not write a report summarizing the data or drawing conclusions from the data; it only delivers the requested tables to the client. Petitioner's data analysis service of compiling and analyzing information is an information service. However, since the information furnished is personal or individual in nature because it is furnished to the same client that collected the data, it is not subject to sales tax. If the data were substantially incorporated in reports furnished to others, the charges for such service would be subject to sales tax. See section 1105(c)(1) of the Tax Law and section 527.3 of the Sales and Use Tax Regulations.

DATED: December 8, 2006

/s/  
Jonathan Pessen  
Tax Regulations Specialist IV  
Technical Services Division

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