New York State Department of Taxation and Finance

**Taxpayer Services Division
Technical Services Bureau**

TSB-A-86(24)S
Sales Tax
June 12, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION   PETITION NO. S860128A

On February 11, 1986, a Petition for Advisory Opinion was received from Financial Decision Systems, Inc., 23025 Dorothy Drive, Agowan Hills, CA 91301.

The issue raised is whether Petitioner's sales of computer software on a perpetual license basis is subject to sales tax.

Petitioner sells licenses on a perpetual basis, to use a computer software product called CORPTAX. CORPTAX is a mainframe computer software product used by large corporations and major financial institutions to do corporate tax planning and compliance with regard to Federal and State corporate income taxes. Prior to the installation of CORPTAX, Petitioner conducts an evaluation and analysis of its customer's requirements and input/output needs. After the analysis, the software is customized to meet the customer's specific requirements. In addition, the software is modified to meet the operating system's job control language.

Technical Services Bureau Bulletin 1978-1 defines software as:

"Instructions and routines (programs) which, after an analysis of the customers specific data processing requirements, are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his EDP system." To be considered exempt "software" for purposes of this bulletin, one of the following elements must be present:

A.   Preparation or selection of the program for the customer's use requires an analysis of the customer's requirements by the vendor.

<div align="center">or</div>

B.   The program requires adaptation, by the vendor, to be used in a specific environment, i.e., a particular make and model of computer utilizing a specified output device. For example, a software vendor offers for sale a pre-written sort program which can be used in several computer models. Prior to operation, instructions must be added by the vendor which specify the particular computer model in which the program will be utilized.

Since Petitioner's software requires analysis of its customer's computer equipment and certain modifications are necessary to make its software compatible to such equipment, the sale of such software is considered the sale of an intangible and thus not subject to sales tax.

DATED: June 12, 1986   s/Frank J. Puccia
                                         Director
                                         Technical Services Bureau

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