

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

TSB-A-88(29)S
Sales Tax
May 26, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880114A

On January 14, 1988, a Petition for Advisory Opinion was received from Compu Service 153 Ross St., Brooklyn, New York 11211.

The issue raised is whether the sale of software under following circumstances is subject to sales tax under section 1105(a) of the Tax Law.

Petitioner sells computer systems for doctors. The system consists of hardware and software sold with installation as a single package. Petitioner does not question the application of sales tax to hardware and its installation, but requests clarification of the application of sales tax to its sales of software.

Petitioner's software (THE MEDICAL MASTER) is a medical practice office management system which enables physicians to submit health insurance claims electronically to their intermediaries. Each medical health insurance company has its own specifications for the layout of the transmitted data. However, any marketable medical software must follow these specifications. In addition, each user (doctor) receives a unique number by which he is identified by the insurance company.

Petitioner described his sales in the following manner:

- Category #1 The doctor does not use the electronic billing mode of the system but may request other customized modifications on the management part of the system. If such modifications prove beneficial for other users, the modification is permanently incorporated into the system.
- Category #2 The doctor will use only electronic claims submission for a specific intermediary, i.e. Medicaid, or only Medicare, or all possible insurance carriers. When a doctor decides to utilize the electronic billing mode, he must fill out an application with the pertinent insurance carrier. He then receives an identification number. Upon reviewing the doctor's list of insurance companies which he wishes to bill electronically, Petitioner must then install the I.D. number in the pertinent programs and subsequently recompile those programs in the system. Thereafter, each claim which the physician submits will have his key identification for reimbursement purposes. This procedure ensures the doctor that his system is personalized with his I.D. for his sole use only.

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Section 1105(a) of the Tax Law imposes a tax upon the sale at retail of tangible personal property. The imposition of sales tax does not apply to the sale of intangible property. Software which meets the criteria set forth in Technical Services Bureau Bulletin 1978-1 is considered intangible personal property.

Technical Services Bureau Bulletin 1978-1 defines software as:

"Instructions and routines (programs) which, after an analysis of the customer's 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.

or

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.

If, in category #1, the "Medical Master" requires analysis or modification in order to make it useable by Petitioner's clients, it would be considered exempt software. However, if petitioner sells the "Medical Master" without any analysis or modifications, the sale is a sale of tangible personal property which is subject to tax. Subsequent modifications will not change this result.

The recompiling of the programs in the system after the installation of a doctor's identification number (category #2) in the software so that the doctor may use the electronic billing mode of the program is considered an adaptation which would clearly convert the software from tangible personal property to intangible property. Consequently, the software described in category #2 is not subject to sales tax.

DATED: May 26, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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