

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

TSB-A-95 (12)S
Sales Tax
April 21, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941125A

On November 25, 1994 a Petition for Advisory Opinion was received from Price Waterhouse LLP, 1177 Avenue of the Americas, New York, NY 10036.

The issues raised by Petitioner, Price Waterhouse LLP, are:

1. Whether the service provided by XYZ Co. to Petitioner is an information service subject to the sales tax imposed under section 1105(c)(1) of the Tax Law.
2. Whether the service provided by XYZ Co. is a nontaxable computer timeshare service.

Petitioner purchases general information databases from various companies. The information is general in nature and may be incorporated into reports furnished to others. Petitioner is billed directly by the information provider and is solely responsible for the payment of all charges incurred as a result of the use of the information provider's service. Petitioner either pays sales tax to the vendor or self-assesses and remits the compensating use tax directly to New York State.

Due to the size of the databases and the computer hardware requirements, Petitioner does not store the information on its own computers. Rather, Petitioner will have the information provider transmit the database, for which a fee was previously paid to the vendor, directly to a third party, XYZ Co. For a flat monthly fee, XYZ Co. will allow Petitioner to access and utilize the information stored on XYZ Co.'s mainframe computer.

Petitioner is able to access and utilize its data stored on XYZ Co.'s mainframe computer by using its own personal computers and modems. XYZ Co. does not transfer any hardware to Petitioner in connection with the computer mainframe data storage. Only Petitioner can tailor the output from the data storage bank. XYZ Co. does not use Petitioner's information in any fashion. All of the information transferred in connection with the above arrangement is done so on-line.

Section 1105(a) of the Tax Law imposes tax on "[t]he receipts from every retail sale of tangible personal property...."

Section 1105(c)(1) of the Tax Law imposes tax on the receipts from every sale, except for resale, of the service of "[t]he 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

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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...."

Technical Services Bureau Bulletin, Computers, 1978-1(S), 2/6/78, at page 3, item 4, defines timesharing as "[t]he charges made to customers for use of a computer, which the customer has access to through a remote terminal device, are not deemed to be a taxable transfer of possession of the computer. However, all or part of the transaction may be taxable according to the type of information provided...."

Section 526.7 of the Sales and Use Tax Regulations states, in part:

Sale, selling or purchase. [Tax Law, §1101(b)(5)]

(e) Transfer of possession. (5) It is not essential for a transfer of possession to include the right to move the tangible personal property which is the subject of a rental, lease or license to use.

Example 14: A corporation contracts with a computer center for access time on the computer center's equipment through the use of a terminal located in the corporation's office. The terminal is connected to the computer by telephone. The corporation's access to the computer through the terminal is not deemed to be a transfer of possession of the computer subject to tax. However, the transaction may be taxable based on the information provided to the customer.

In the instant matter, since the XYZ Co. merely stores Petitioner's previously purchased databases on its mainframe computer and allows Petitioner on-line access for purposes of utilizing Petitioner's stored information, the flat monthly fee charged Petitioner by XYZ Co. is a fee for computer timesharing. As there is no transfer of title or possession of the computer in this transaction, the transaction is not subject to the sales tax imposed under section 1105(a) of the Tax Law. (See, 20 NYCRR 526.7(e)(5) and TSB Bulletin, 1978-1(S), supra.)

Likewise, since Petitioner has previously purchased the databases from a third party and arranged for the storage of the databases on XYZ Co.'s mainframe computer, XYZ Co.'s transactions with Petitioner are not sales of information services and accordingly the receipts from the fees charged to Petitioner for the computer timesharing are not subject to the tax imposed on the sale of information services under section 1105(c)(1) of the Tax Law.

DATED: April 21, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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