

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

TSB-A-95 (5)S
Sales Tax
February 9, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940714A

On July 11, 1994, a Petition for Advisory Opinion was received from Metropolitan Archives, Inc., 214 West 29th Street, 12th Floor, New York, New York 10001.

The issues raised by Petitioner, Metropolitan Archives, is whether the sale of archival services to the real estate industry and the purchase of computers used to provide such services are subject to sales tax.

Petitioner is an archival firm for the real estate industry. Petitioner performs any one or all of the following services for a building owner (Subscriber).

Petitioner will obtain information from the New York City Department of Buildings (DOB) relating to a subscriber's property. This information, which relates to work performed in the subscriber's property which needs DOB work permits, approvals, inspections etc., is public information which can be accessed by the general public. Once the information (architectural and engineering drawings as well as related paperwork) is obtained, the hard copy is scanned into a computer system at which time attributes are assigned to each document to facilitate easy retrieval at a later date. The scanning process converts the document to a digital image which the computer can recognize. Petitioner charges a subscriber, based on the number of documents scanned, a fee to retrieve the documents from the DOB and scan the documents into the computer.

Petitioner will obtain information (architectural and engineering drawings as well as related paper work) directly from the subscriber. This information is the property of the subscriber. The same scanning process as above is performed. A fee is charged based on the number of documents scanned.

Petitioner will provide a catalog of the documents which reside in its data base related to the subscriber's property. The catalog will be a sorted listing of the attributes assigned to the documents. No fee will be charged for the production of the catalog.

Petitioner will search its computer database upon a request for information from the subscriber. The information requested will be given to the subscriber verbally or reproduced in hard copy based on the data in petitioner's system. A fee will be charged based upon the number of information requests.

Petitioner will charge a flat monthly maintenance fee to the subscriber to maintain the database. The maintenance fee is based upon the size of the computer database related to a subscriber's documents.

Petitioner will provide a manual search of the DOB for documents of subscribers who do not have their information scanned into the database. Petitioner will charge the subscriber a fee based on the complexity of the search and the number of visits required to be made to the DOB.

Petitioner will provide expediting services to architects, contractors and building owners. Services will include assistance in the filing of applications to obtain building permits and retrieval of any original documents needed from the DOB. Petitioner will charge a fee on a per application and search basis.

Section 1105(a) of the Tax Law imposes a tax upon "[T]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 526.5(e) of the Sales and Use Tax Regulations provide that "[A]ll expenses, including telephone and telegraph and other service charges, incurred by a vender in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts".

Section 1105(c) imposes a tax upon:

(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, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news.

(2) Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed.

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(9)(i) The furnishing or provision of an entertainment service or of an information service, which is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature, such as entertainment or other services provided through 800 or 900 numbers or mass announcement services. Provided, however, that in no event (i) shall the furnishing or provision of an information service be taxed under this paragraph unless it would otherwise be subject to taxation under paragraph one of this subdivision if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner . . .

The tax status of documents prepared by Petitioner depends on whether the completed job constitutes data conversion or the furnishing of information. Northeastern Computer Services, Inc. Adv Op Comm T & F, June 24, 1988, TSB-A-88(33)S.

If data is arranged to the purchaser's specifications without creating new information and is merely a change in the form, the transfer to the client of the medium on which the client's source data is recorded constitutes the sale of tangible personal property, taxable in accordance with the provisions of section 1105(a) of the Tax Law. See, Taxability of Major Data Entry Techniques. TSB-M-81(3)S.

Moreover, where information already in a customer's possession is merely converted 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, there is a sale of tangible personal property rather than the sale of an information service. (Finserv Computer Corp. V. Tully, 463 N.Y.S. 2d 924, affd 61 N.Y.2d 947)

In Allstate Insurance Company v. State Tax Commission, 115 AD2d 831, the court held that the furnishing of New York State Department of Motor Vehicle records by Hooper Holmes, Inc. to Allstate was the furnishing of an information service even if the information was collected from a single source. Additionally, the court held that the exclusion from tax for information which is personal or individual in nature refers to uniquely personal information and does not apply to information filed with a government agency as a public record to which there is unlimited public access.

Placing a clients' documents on computer for later retrieval is part of the process by which petitioner keeps its clients' documents available. As Petitioner's clients' request their documents back, Petitioner reproduces such documents by computer. It is the sale of the reproduced documents that is subject to the sales tax imposed under section 1105(a) of the Tax Law, (i.e., receipts from the sale of tangible personal property). All expenses or charges leading to the sale of the tangible personal property are part of the receipt subject to tax. This includes Petitioner's scanning charges and maintenance fees as well as any other charge which may precede the sale of the reproductions.

Petitioner's manual search of the DOB for documents of subscribers who do not have information in Petitioner's data base is subject to sales tax under Section 1105(c)(1) of the Tax Law if the information Petitioner provides subscribers is written, and Section 1105(c)(9) if it is provided by telephone or telegraph. Information provided to Petitioner's clients that is based upon its clients' documents which is provided only orally, is not subject to tax.

There are no sales tax exemptions for the purchase of computers or other machinery or equipment used to provide information services regardless of whether or not such services are subject to sales tax.

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Petitioner's expediting service which includes assistance in filing applications to obtain building permits and the retrieval of any original documents from the DOB is not one of the services subject to the sales tax.

Since Petitioner's catalogs are given away rather than sold, they may not be purchased for resale.

DATED: February 9, 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.²