

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

TSB-A-85(34)S  
Sales Tax  
August 21, 1985

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840502A

On May 2, 1984 a Petition for Advisory Opinion was received from Data Intelligence Systems Corp., 19 Monsignor O'Brien Highway, Cambridge, Massachusetts 02144.

The issue raised is whether a vendor operating a business corporation in Massachusetts is required to collect New York State Sales Tax on tangible personal property sold in Massachusetts for use within New York State.

Petitioner sells mini and micro computers, hardware, software, and hardware and software maintenance. Petitioner states that it has sold six computers which are known to be in New York State and that it performs no maintenance service on these units.

Petitioner further alleges that it does not operate an office in New York State, has no employees residing in New York State, sends no salesmen into New York territory on sales calls, and does not exhibit its product or distribute unsolicited advertising brochures within the State.

Article 28 of the Tax Law provides that every person who makes retail sales of tangible personal property in New York (which includes sales where the property is delivered to the customer in New York) is required to register with the Tax Commission and to collect the sales tax due with respect to such sales.

The Tax Law contains, in part, the following definitions:

Section 1101(b)(8) "Vendor. (i)(C) A person who solicits business either by employees, . . . agents or other representatives or by distribution of catalogs, or other advertising matter and by reason thereof makes sales to persons within the state of tangible personal property or services, the use of which is taxed by this article; . . .

Section 1131 (1) . . . "person required to collect any tax imposed by this article" shall include: every vendor of tangible personal property or services; . . . (4) "Property and services the use of which is subject to tax" shall include: (a) all property sold to a person within the state, whether or not the sale is made within the state, . . .

The Tax Law further provides in Section 1134(a)(1): "Every person required to collect any tax imposed by this article commencing business, or opening a new place of business, . . . shall file with the Tax Commission a Certificate of Registration, in a form prescribed by it, at least twenty days prior to commencing business. . . .

Special rules applicable to vendors located outside New York State are set forth in Sales and Use Tax Regulations Section 526.10:

"(e) Interstate vendors. (1) A person outside of this State making sales to persons within the State, who solicits the sales in New York, as defined in subdivision (d) of this section, or who maintains a place of business as defined in subdivision (c) of this section, is required to collect the sales tax on the tangible personal property delivered in New York or the services performed in New York.

The "subdivision (c) and subdivision (d)" referred to in the foregoing reads, in relevant part, as follows:

"(c) Maintaining a place of business. A vendor shall be considered to maintain a place of business in the State if he, either directly or through a subsidiary, has a store, salesroom, sample room, showroom, distribution center, warehouse, service center, factory, credit and collection office, administrative office or research facility in the State.

"(d) Soliciting business. (1) A person is deemed to be soliciting business if he has employees, salesmen, independent contractors, promotion men, missionary men, service representatives or agents soliciting potential customers in the State.

Example 1: An out of State company that has a sales representative contracting customers in the State is soliciting business as a vendor.

Example 2: An out of State company that has an independent salesman contacting customers in the State is soliciting business and is a vendor. The fact that the independent salesman represents other companies as well is irrelevant.

Example 3: An out of State company that has a booth at a trade fair, staffed by its promotion men, is soliciting business in the State and is a vendor.

(2) A person is deemed to be soliciting business in New York if he distributes catalogs or other advertising material, in any manner in the State.

(3) A person is deemed to be soliciting business if he places advertisements in New York newspapers or over New York radio or television stations, and either requests that orders, payments or inquiries be sent to a New York address or delivers orders to New York in vehicles that he controls."

The information submitted by Petitioner indicates that, at the time the Advisory Opinion was requested, Petitioner neither maintained a place of business nor solicited business in New York State, as defined in subdivision (c) and (d) of Regulations Section 526.10. If Petitioner's sales operations are consistent with the facts stated in the Petition, property sent to New York destinations is not subject to sales tax if delivery is made by mail or common carrier, and provided that petitioner performs no maintenance service on the property at the New York location.

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Accordingly, Petitioner would not be required to collect New York State or local sales or use taxes on sales sent to New York destinations under such circumstances.

Petitioner's customers, however, must report the purchase of such property on their returns and must pay the applicable State and local compensating use taxes.

However, if Petitioner has salesmen in New York State, distributes catalogs or other advertising matter in this state or otherwise solicits business in this state and by reason thereof makes sales to persons within this state, then Petitioner is a vendor within the meaning of section 1101(b)(8) of the Tax Law and is required to collect sales tax on all of its taxable sales sent to New York destinations.

DATED: July 30, 1985

s/ANDREW F. MARCHESE  
Chief of Advisory Opinions

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