

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

TSB-A-93 (16)S
Sales Tax
February 25, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S921005B

On October 5, 1992, a Petition for Advisory Opinion was received from Alan/Anthony, Inc., 145 Avenue of the Americas, 2nd Floor, New York, New York 10013.

The issue raised by Petitioner, Alan/Anthony, Inc., is whether the development and maintenance of a computer database of its client's membership is an information service which is "personal or individual in nature" within the meaning of the exclusion from tax contained in Section 1105(c)(1) of the Tax Law, and, therefore, not subject to sales tax.

Petitioner developed and maintained a computer database of the membership of a nonprofit trade association located in Staten Island, New York. All information entered into the database is provided by Petitioner's client and is personal, private and confidential in nature.

Petitioner's company receives "raw" information from the client in the form of correspondence listing names, addresses and information about the operations and finances of the members. Petitioner enters the information into the database and performs substantial processing of it in order to generate membership lists, tabulated tables, charts and graphs which interpret and recast the "raw" information into completely new forms. No copies of the lists, tables, graphs and charts are sold to third parties, but are for the client's internal use only.

Supporting documents submitted with petition include a copy of the applicable section of the letter of agreement, a copy of a sample invoice for the service, and the following samples of documents generated for the client from the database:

- A. Membership Listing (European Members by Country)
- B. Graph Analysis of Worldwide Membership Growth, 1985 - 1991
- C. Graph Analysis of Membership Growth by Region. 1985 - 1991
- D. Pie Graphs of Membership Growth by Region, 1985 and 1991
- E. Graph Analysis of Membership Growth by Type of Organization
- F. Year-By-Year Demographic Analysis of Membership

Section 1105(a) of the Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided in the statute.

Section 1105(c)(1) imposes sales tax on:

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. (emphasis added)

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 purchasers' specifications in tables, graphs, charts or other paper printouts without creating new information but merely a change in form, such 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).

Conversely, the preparation of a report is deemed an information service if it requires the Petitioner to process data through a computer system under the control of a program for new information, rather than merely render back information supplied by the customer in a more convenient form, supra.

A report must qualify as an information service before its eligibility for the exclusion contained in Section 1105(c)(1) of the Tax Law can be established.

The Advisory Opinion function is limited to setting forth the applicability of pertinent statutory and regulatory provisions to a specified set of facts. The information contained in the Petition is not sufficiently detailed for a final classification, for tax purposes, of each report, tabulation or product Petitioner furnishes under a data processing agreement. This determination must necessarily be made by administrative procedure.

DATED: February 25, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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