
Opinion of the Tax Commissioner

Date Issued: April; 30, 1992

Opinion No: 92-0007

Tax: Sales/Use

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Subject: Electronic Reports

This request for an opinion of the Tax Commissioner was received on March 16, 1992 from XXXX, writing on behalf of its division known as XXXX (hereinafter "Taxpayer"). Specifically, Taxpayer wishes to know whether or not Ohio sales or use tax is applicable to transactions whereby it provides to its customers certain reports called "Motor Vehicle Reports" (MVR).

Taxpayer's Description of Transactions in Question:

Taxpayer obtains and provides MVR's to its customers. The customers are insurance companies that want to know the history of particular drivers who apply for automobile insurance. Taxpayer obtains the necessary information from the state departments of motor vehicles and sends it to its customers on "Driver Record Information Reports." (A sample of such a report was enclosed with the opinion request.)

The customer types a request for an MVR on its computer terminal located in the insurance company's office. The request is then transmitted over regular telephone lines to Taxpayer's mainframe computer in XXXX. There, Taxpayer's computer accumulates all customer requests and sorts them by state once a day for subsequent delivery to each state.

In Ohio, the State of Ohio Bureau of Motor Vehicles has the computer capability to enable Taxpayer to transmit MVR requests directly to the Ohio Bureau of Motor Vehicles via telephone lines from XXXX, to Columbus, Ohio. The Ohio Bureau of Motor Vehicles processes these requests and transmits information electronically directly back to Taxpayer in XXXX.

This information is accumulated by Taxpayer's computer and then sorted by customer. At this time, the state traffic violation codes are translated into a standardized format for certain customers that have requested a standardized format. Some customers do not request such standardized format. Taxpayer has found that standard violation codes facilitate the interpretation of motor vehicle traffic violation codes by translating each state's varying traffic violation codes into standard violation codes for its customers.

The MVR information is then transmitted from Taxpayer in XXXX to its customers. These customers are located throughout the country. Usually the information is transmitted electronically via telephone lines to the customer, where it is stored on computer disc or fed

directly to a printer in the customer's office.

The entire process described herein takes about 24 hours. A MVR requested on one day is usually delivered to a customer by the next day.

Tax Commissioner's Analysis:

In normal transactions as described by Taxpayer, no tangible personal property is transferred to its insurance company customers. Taxpayer is providing a service which, to be subject to sales or use tax, must be among the services enumerated in R.C. 5739.01(B)(3).

Arguably, Taxpayer's activity could be considered to fall under R.C. 5739.01(B)(3)(e), "automatic data processing services," as that service is defined in Adm. Code Rule 5703-9-46(A)(1)(b): "Providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment." However, a close examination of Taxpayer's operation shows that customers are not granted computer access to the information they seek. Rather, their computers are used solely as a mode of communicating the request for information. Upon receiving a request, Taxpayer takes steps to procure the information. A day later, the requested information is transmitted, via computer, to the customer.

In conclusion, Taxpayer's transactions with its customers do not meet the definition of "sale" in R.C. 5739.01(B), and hence cannot be subject to Ohio sales or use tax.

The tax consequences stated in this opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of the Taxpayer to be aware of such changes. R.C. 5703.53(E).

Roger W. Tracy
Tax Commissioner