
Opinion of the Tax Commissioner

Date Issued: February 12, 1996

Opinion No: 94-0011

Tax: Sales/Use

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Subject: Acquisition of Data

This request for an opinion of the Tax Commissioner was received on September 15, 1994. The Taxpayer is in the business of providing an electronic information service. The Taxpayer wishes to know whether or not sales or use tax applies to transactions whereby it acquires data.

FACTS AS STATED BY TAXPAYER

Taxpayer provides full-text, on-line legal, news, and business information services to licensed subscribers. Subscribers are professionals, such as lawyers, accountants, financial analysts, journalists, public relations, marketing, and other entities, who access the services mostly through personal computers. Taxpayer bills, collects, and remits Ohio sales tax from licensed subscribers or obtains the appropriate exemption documentation.

Taxpayer's data providers are news services, wire services, publishers, brokerage houses, courts, and others with whom it has licensing agreements. Most information is received as electronic transmissions via satellite or telephone lines. Some information is acquired via hard copy, facsimile machine, or magnetic tapes and disks. The acquisition of the data, the right to distribute certain data, and the preparation of certain data is referred to by the Taxpayer as "Source Acquisition," "Use Royalties," and "Data Prep Service," respectively.

"Source Acquisition" is the account Taxpayer uses to accumulate costs associated with acquiring public-domain information and certain copyrighted information. This includes statutes, cases, legal opinions, regulations, medical information, business and financial news, filings, and other information. The information is obtained via electronic transmissions, satellite, phone lines, FAX lines, on tapes, disks, or hard copy documents. Some information is immediately uploaded into the database environment for access by subscribers. The balance must be converted before it can become part of the database environment. There is no original text written by Taxpayer. Taxpayer must, however, make reference to certain trademarks and copyrights. Most information is proprietary and cannot be changed per agreements. All of the identical information could be obtained from hard copy sources elsewhere.

"Data Prep Service" is the account Taxpayer uses to accumulate costs associated with converting hard copy information or electronic information that needs to be "translated" into "machine-friendly" language. The conversion is performed by third parties. The information is

then received by Taxpayer in electronic form for immediate uploading into the databases. No original text is ever created and added by Taxpayer.

"Royalties Use" is the account Taxpayer uses to accumulate payments made to licensors of non-public-domain information, that includes publications and wire services. The payments are based on formulas which are tied to the use of a licensor's information. The information is received by Taxpayer in "machine-friendly" electronic form at the licensor's cost. The royalty agreements give Taxpayer a right to distribute and market licensed information. Taxpayer acquires no proprietary interest in the information as the licensor maintains exclusive copyrights to it. According to the agreements, Taxpayer must destroy all information in its possession upon termination of the agreement.

QUESTIONS FOR WHICH OPINIONS ARE REQUESTED

1) Are Taxpayer's Royalties Use payments for the right to distribute licensed materials excepted from the definition of a retail sale under O.R.C. Section 5739.01 and therefore not subject to the sales and use tax?

Answer: Taxpayers payments charged to the Royalties Use account are for the right to distribute information, an intangible. Those payments are not subject to sales or use tax.

2) Do Taxpayers Data Prep payments to outside contractors for the service of converting information into "machine-friendly" information qualify as "resales" of automatic data processing services, and therefore exempt from sales and use taxes under O.R.C. Section 5739.01(E) (1)? If not, does the fact that the contractors are located outside Ohio and perform these services outside Ohio give rise to a nontaxable situation?

Answer: "Data Prep" is the term used by the Taxpayer to describe automatic data processing services that it purchases from outside contractors. These purchases are within the definition of "sale" in R.C. 5739.01(B) (3) (e). However, the purpose of the Taxpayer in purchasing the services is to resell their benefits in the same form, and therefore the purchases are excepted from tax pursuant to R. C. 5739.01(E) (1).

3) Are any of Taxpayer's payments for Source Acquisition excepted from the definition of a retail sale under O.R.C. Section 5739.01 and therefore not subject to the sales and use tax? If not, do any of these payments qualify as "resales" of information under O.R.C. Section 5739.01(E) (1) or do they qualify as any other exemption from the sales and use tax under O.R.C. Section 5739.01 or Section 5739.02?

Answer: Section 5739.01(E) (1) of the Revised Code excludes transactions from the definition of retail sales where the purpose of the consumer is "To resell the thing transferred or the benefit of the service provided *** in the form in which the same is *** received." To determine if purchases charged to Source Acquisition are taxable it must be ascertained if tangible personal property or services are received in this state and, if they are, whether they are resold to the taxpayers customers in the same form the taxpayer receives them. Information received in this

state on a tangible medium, such as tape, disk, or hard copy, that the taxpayer uses to load information onto its system for sale is not being resold in the same form that the taxpayer receives it. Therefore, this type of material is subject to Ohio sales or use tax. If the taxpayer is receiving computer information directly into its system by electronic transmission, that information is being resold in the same form it is received and is not subject to Ohio sales or use tax. When the taxpayer has information on a tangible medium delivered to a location outside Ohio, the Ohio tax does not apply. If an out-of-state contractor takes the information from that tangible medium and acts on it to convert it to a form usable by the taxpayer and then transmits that information directly to the taxpayer's system electronically, the service received by the taxpayer is then being resold in the same form. Such a transaction is not taxable.

Among the Taxpayers sources of information are courts and other governmental entities, both state and federal. Sales of services provided by Ohio governmental entities are exempt from sales and use tax, pursuant to R.C. 5739.02(B) (22). However, purchases of tangible personal property from governmental entities may be subject to use tax. The tax status of information purchased by the taxpayer from governmental entities is dependent on the form in which it is received, as discussed in the preceding paragraph.

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