
Opinion of the Tax Commissioner

Date Issued: April 18, 1991

Opinion No: 91-0006

Tax: Sales/Use

XXXX
XXXX
XXXX

Subject: Automatic Data Processing

This request for an opinion of the Tax Commissioner was received on 27 February 1991. Specifically, it concerns the application of the sales and use tax to the service provided by the above name entity.

XXXX has alleged the following factual circumstances:

- 1) YYYY, is a vendor of services to the cellular telephone industry. As part of the contracts between YYYY and the cellular providers. YYYY is responsible for handling end-consumer billing.
- 2) Since YYYY is not capable of handling all of the building functions, YYYY has entered into a contract with XXXX, wherein XXXX becomes a vendor to YYYY for all functions related to bill production.
- 3) XXXX receives data from YYYY computer in LOCATION 1 at its LOCATION 2 facility. The data is processed and handled in order to produce a printed bill. XXXX also provides envelopes, inserts materials into the envelopes, prepares the bills for mailing, and deposits the bills into the United State mail.

QUESTIONS FOR WHICH OPINIONS ARE REQUESTED

- (1) Are the services provided by XXXX to YYYY taxable under Ohio sales and use tax law?

ANSWER The taxability of this transaction is governed by Ohio Revised Code section 5739.01(B)(3)(e) and Commissioner's Rule 5703-9-46. Rule 5703-9-46(B)(1) provides that when the true object of a transaction is the receipt of automatic data processing services, the services are taxable if the benefit of these services is received in Ohio. Since YYYY is the recipient of these benefits, and it is located in Ohio, then the transaction is taxable if the true object is the receipt of automatic data processing services. Rule 5703-9-46(B)(2) provides that the true object of a transaction is the receipt of automatic data processing services if such services render a significant benefit to the consumer. In the present case, the services related to the preparation and mailing of the bills is incidental to YYYY's true object: the use of computers to collate, prepare and disseminate billing information. Since the receipt of automatic data processing services is the true object of the transaction, then the whole transaction is subject to the sales tax.

(2) If the transaction is taxable, may XXXX treat its services as a sale for resale?

ANSWER The Tax Commissioner has not been provided with sufficient information to render an opinion. Whether or not these services are resold depends upon the nature of the contract between YYYY and the cellular providers.

(3) Must XXXX obtain an exemption certificate from YYYY?

ANSWER Since the transaction is taxable, XXXX must collect tax from YYYY unless YYYY presents a properly completed exemption certificate. If YYYY claims that its purchase is to be resold, and provides a properly completed exemption certificate, then XXXX will be protected from any liability for its non-collection of tax on these services. See Ohio Revised Code section 5739.03(B). If YYYY provides an exemption certificate as described above, then it is assuming the responsibility of collecting sales tax from the cellular providers on the amount charged by YYYY to the cellular provider for the billing service.

Roger W. Tracy
Tax Commissioner