
Opinion of the Tax Commissioner

Date Issued: August 12, 1991

Opinion No: 91-0016

Tax: Sales

XXXX
XXXX
XXXX

Subject: Software

This request for an opinion of the Tax Commissioner was received on June 19, 1991. Specifically, it concerns the application of sales tax to custom programming of application software.

XXXX (hereinafter referred to as taxpayer) has submitted documentary evidence supporting the following factual circumstances:

- (1) The taxpayer is engaged in the business of providing computer services which include programming of custom application software.
- (2) The custom programming of application software involves the writing and design according to a customer's special need.
- (3) The taxpayer also provides testing and debugging for the software designed.

OPINION

The relevant statutes regarding the tax treatment of computer services and custom programming application software are enumerated in Ohio Revised Code 5739.01(B)(3)(e), 5739.01(Y)(1) and 5739.01(Y)(2)(e). In pertinent part, such definitions are:

5739.01(B)(3)(e) includes in the definition of "sale" transactions in which, "Automatic data processing and computer services are or are to be provided for use in a business when the true object of the transaction is the receipt by the consumer of automatic data processing or computer services...."

5739.01(Y)(1) defines automatic data processing and computer services as "...processing of others' data, including keypunching or similar data entry services together with verification thereof; providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment; and services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems. Automatic data processing and computer services shall not include personal or professional services."

5739.01(Y)(2)(e) defines "personal services" (in part) as "Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled and reported so that it will be meaningful to management."

The custom programming of application software that the taxpayer provides to its customer fits the statutory language of personal services in R.C. 5739.01(Y)(2)(e). Accordingly, it is the opinion of the Tax Commissioner that such services are not subject to sales 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.

Roger W. Tracy
Tax Commissioner