
Opinion of the Tax Commissioner

Date Issued: August 5, 1992

Opinion No: 92-0009

Tax: Sales

XXXX
XXXX
XXXX

Subject: Automatic Data Processing

This request for an opinion of the Tax Commissioner was received on April 4, 1992. Specifically, it concerns the application of sales tax on the computer services you provided to your clients.

FACTUAL BACKGROUND

(1) The taxpayer is engaged in the business of providing information systems and data processing services to the property management industry.

(2) On the billing, the taxpayer separately bills personal computer support calls, information processing center processing, supplies and delivery charges.

(3) The services offered include the traditional mainframe service and the self service option that enable a customer to obtain financial statements on demand and print any reports in their offices.

(4) The taxpayer performs extensive editing and analysis of data to insure the integrity of the processing and resulting reports. The taxpayer also formats customer's financial statement and provides them with custom reports.

OPINION

The Ohio sales and use tax law for determining tax treatment of data processing is defined in R.C. 5739.01(B)(3)(e) and R.C. 5739.01(Y)(1). In pertinent part, such definitions are: R.C. 5739.01(B)(3)(e) includes in the definition of a sale, "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 rather than the receipt of personal or professional services to which automatic data processing or computer services are incidental or supplemental * * *."

R.C. 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 configuration 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."

Personal services are defined in R.C. 5739.01(Y)(2)(a) as including, "Accounting and legal services such as advice on tax matters, asset management, budgetary matters, quality control, information security, and auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets, or adjusts such material."

Personal services are further defined in R.C. 5739.01(Y)(2)(e) 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."

XXXX processes and enters data for property management clients. It also provides access to computer equipment to its customer for the purpose of processing data or examining or acquiring data stored. In addition, XXXX offers supplies, maintenance and training of computer programmers. All these services provided are considered as part of the taxable computer data processing services pursuant to R.C.5739.01(B)(3)(e).

Genuine Parts Co. v. Limbach (1991), 62 Ohio St. 3d, a case recently decided by the Supreme Court of Ohio, was cited by the taxpayer in support of the position that the data processing services should not be subject to tax. In Genuine Parts, the Court held that the services provided by Automotive Management Services to its independent auto parts stores were bookkeeping and accounting services that are exempt from tax pursuant to R.C. 5739.01(Y)(2)(a). The exempted services involved in Genuine Parts include preparation of financial statements and tax returns, reconciliation bank statements, printing of checks to pay invoices and employees and the rendition of financial advice to the auto parts stores. The Genuine Parts decision is distinguishable from this instance case since XXXX is not providing such services, rather it provides a computer data service to its customer to help it manage more effectively.

However, the separately stated personal computer support calls which represent phone time assisting clients in the use of software products fit the definition of personal services as defined in R.C. 5739.01(Y)(2)(e) and therefore are excepted from 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 tax payer to be aware of such changes.

Roger W. Tracy
Tax Commissioner