
Opinion of the Tax Commissioner

Date Issued: August 14, 1992

Opinion: 92-0015

Tax: Sales/Use

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XXXX
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Subject: Computer Services

This request for an opinion of the Tax Commissioner was received on June 29, 1992. Specifically, it concerns the application of sales tax on the computer services you provided to your clients.

FACTUAL BACKGROUND

(1) XXXX (taxpayer) is engaged in the business of providing interactive on-line personal computer service to individual members.

(2) The individual member interacts by telephone line with a computer through the use of modem to access the services provided by the taxpayer. Such services include providing reports in news, weather, sports and stock quotes; arrangement for payment of bills and the transfer of funds; the purchasing and selling of stocks and other investment securities. Members also receive messages through the electronic mail system.

(3) Each member is responsible for any interstate and local telecommunication charges for the use of the telephone lines. The modem and personal computer are owned by member and not provided by the taxpayer.

(4) The taxpayer's Membership Agreement provides that the service is available only to individuals and not business entities. Each member is required to execute the agreement.

OPINION

The relevant 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(F). 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 * * *." (Emphasis added.)

R.C. 5739.01(F) defines business as, "... any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect. 'Business' does not include the activity of a person in managing and investing his own funds." (Emphasis added.)

Since the taxpayer provides computer services to individuals, rather than business entities, as evidenced by the terms of the membership agreement, R.C. 5739.01(B)(3)(e) does not apply. Similarly, the individual member is not engaged in the business of stock or securities trading when managing and investing his/her own funds pursuant to R.C. 5739.01(F). Accordingly, the subscription fees in question are not subject to sales or use tax. The taxpayer is not required to collect sales or use tax as long as membership agreements are entered into with individuals for their private use.

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