

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-A-90 (24)S
Sales Tax
February 26, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891215E

On December 15, 1989 a Petition for Advisory Opinion was received from Lorraine L. Dunn CPA, 3960 Pawnee Drive, Liverpool, New York 13090.

The issue raised by Petitioner, Lorraine L. Dunn CPA, is whether charges for a tax processing software program and subsequent license renewal agreements are exempt from the imposition of sales and use tax.

Petitioner is a tax preparer who purchases a tax processing program from a software company. In order for the software company to process and fill her request for the software it requests specific information which is used to personalize the software which she purchases. Specifically it requires her name, address, social security number, specific computer information, and specific printer information. This personal information is then incorporated into the software package which is then sent to her. Because of the personalized information, no one other than the purchaser of the program can use the program.

The tax status of receipts from computer program ("software") sales and services is explained in Department of Taxation and Finance Technical Services Bulletin 1978-1(S), issued February 6, 1978:

Instructions and routines (programs) which, after an analysis of the customer's specific data processing requirements, are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his EDP system. To be considered exempt "software" for purposes of this bulletin, one of the following elements must be present:

A. Preparation or selection of the program for the customer's use requires an analysis of the customer's requirements by the vendor.

or

B. The program requires adaptation, by the vendor, to be used in a specific environment i.e., a particular make and model of computer utilizing a specified output device. For example, a software vendor offers for sale a pre-written sort program which can be used in several computer models. Prior to operation, instructions must be added by the vendor which specify the particular computer model in which the program will be utilized.

The software may be in the form of:

- a. Systems programs (except for those instruction codes which are considered tangible personal property in paragraph 1 above)--programs that control the hardware itself and allow it to compile, assemble and process application programs.
- b. Application programs--programs that are created to perform business functions or control or monitor processes.
- c. Pre-written programs (canned)--programs that are either systems programs or application programs and are not written specifically for one user.
- d. Custom programs--programs created specifically for one user.

Software, meeting the above criteria, whether placed on cards, tape, disc pack or other machine readable media, or entered into a computer directly, is deemed to be intangible personal property for sales tax purposes, and as such its sale is exempt from New York State and Local Sales and Use Taxes. Software or programs which do not meet the criteria are subject to tax. The person selling exempt software is required to pay the applicable sales or use tax on any tangible personal property transferred to the customer in connection with the exempt service. In addition, the hardware, utility services and supplies used to develop the exempt software are not eligible for any sales tax exemptions.

In the instant case the information inserted into the program is inserted by the vendor for the purpose of preventing someone other than the Petitioner from using the pre-written program which it has sold to the Petitioner without purchasing their own copy. The pre-written program sold to the Petitioner does not require an analysis of the Petitioner's specific data processing requirements in order to program the Petitioner's computer equipment so as to enable her to accomplish specific functions with her computer system that she required as part of her tax preparation business activities.

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Therefore the original tax processing software program and subsequent annual renewal agreements or updates of the original program are not deemed to be intangible personal property exempt from New York State and local sales and use tax.

DATED: February 26, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.