

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petitions	:	
	:	
of	:	
	:	
EQUIFAX SERVICES, INC.	:	DETERMINATION
	:	
for Revision of Determinations or for Refunds	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period June 1, 1977	:	
through May 31, 1980.	:	

Petitioner, Equifax Services, Inc., P.O. Box 4081, Atlanta, Georgia 30302, filed petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1977 through May 31, 1980 (File Nos. 39546, 39626 and 41731).

A hearing was held before Arthur S. Bray, Hearing Officer, at the offices of the State Tax Commission, Building #9, W. A. Harriman State Office Building Campus, Albany, New York, on December 9, 1986 at 9:15 A.M., with all briefs to be filed by April 3, 1987. Petitioner appeared by Bond, Schoeneck & King (Gary M. Clark, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUES

I. Whether petitioner's activity of furnishing motor vehicle reports constitutes an information service within the meaning of Tax Law § 1105(c)(1).

II. Whether the motor vehicle reports furnished by petitioner are personal and individual in nature within the meaning of Tax Law § 1105(c)(1).

III. Whether petitioner acts in an agency or representative capacity within the meaning of Tax Law § 1105(c)(1) when it obtains motor vehicle reports.

IV. Whether the fees charged by the Department of Motor Vehicles, which are an element of cost in furnishing motor vehicle reports, were properly includible in taxable receipts.

FINDINGS OF FACT

1. The Audit Division issued three notices of determination and demands for payment of sales and use taxes due to petitioner as follows:

<u>Date of Notice</u>	<u>Period</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
9/18/81	6/1/77-2/28/79	\$2,237,744.06	\$628,491.77	\$2,866,235.83
6/18/82	3/1/79-8/31/79	710,044.96	205,282.86	915,327.82
12/28/82	9/1/79-5/31/80	149,180.26	46,000.58	195,180.84

At the hearing, the Audit Division conceded that the tax assessed for the quarterly period ended November 30, 1979 was barred by the statute of limitations.

2. On December 15, 1982, the Audit Division issued two notices of assessment review to petitioner which reduced the amount of tax assessed as follows:

<u>Period</u>	<u>Adjusted Tax Due</u>	<u>Interest to 12/28/82</u>	<u>Total</u>
6/1/77-2/28/79	\$253,170.44 ¹	\$114,560.26	\$367,730.70
3/1/79-8/31/79	98,978.51	35,637.01	134,615.52

3. To the extent at issue herein, the assessment of sales and use taxes was premised upon the Audit Division's position that petitioner is engaged in providing a taxable information service.

4. Petitioner, Equifax Services, Inc. ("Equifax"), is a service agency, primarily for insurance companies.

5. Among the services which Equifax provided to its insurance company clients during the period June 1, 1977 through May 31, 1980 was the requesting on their behalf and delivery of motor vehicle report data ("MVRs") from the Departments of Motor Vehicles ("DMVs") in various states, including New York.

¹It is recognized that the notice contained a typographical error which reported the adjusted tax due as \$250,170.44. However, it is clear from the explanation on the notice that the adjusted tax due is as set forth above.

6. An MVR is a report generated and prepared by the New York State Department of Motor Vehicles and its equivalent agencies in other states, which contains information on the driving record of individual licensed drivers, primarily accidents and convictions.

7. During the audit period, Equifax requested and delivered MVRs on behalf of approximately twelve hundred insurance companies.

8. The MVRs requested by Equifax on behalf of its clients during the audit period originated from almost all states except Massachusetts, where MVRs are not available.

9. The MVRs are used by Equifax's insurance company clients as an underwriting tool for automobile policy writing.

10. In approximately 85 to 90 percent of the cases, Equifax rendered its MVR service to its clients as follows: the client, from a terminal located on its own business premises, data-entered its MVR requests and transmitted them over telephone lines to Equifax's Albany office, where the requests were recorded onto magnetic tape. If the client requests were for New York MVRs, the tapes were then hand-delivered to the New York State Department of Motor Vehicles. If the requests were for out-of-state MVRs, the Equifax Albany office transmitted the requests to the appropriate out-of-state Equifax office for capture on magnetic tape and hand-delivery to the appropriate Department of Motor Vehicles. The DMVs, including New York's, processed the tapes and recorded the requested MVRs on magnetic tapes. Equifax picked up the tapes, separated the MVRs according to client, and transmitted the MVRs via telephone lines to the terminal at the client's premises, where the client itself printed out the MVRs.

11. The remaining 10 to 15 percent of petitioner's clients either requested MVRs through the mail or over the telephone. In these instances, the information requested would be entered on magnetic tape and delivered to a DMV. If the client did not have a terminal, the report was delivered to the client by courier or mail.

12. The request record provided by a client to Equifax for transmission to DMVs and included with every MVR request to a DMV contained a "user's reference code" assigned by Equifax which identified the insurance company that requested the MVR. In most states,

including New York, the "user's reference code" identifies the requesting client to Equifax alone, and the DMV does not know or ask to know which specific insurance company the code stands for, although the DMV does know that the MVR is being requested from someone other than Equifax.

13. The DMVs permit or require the inclusion of a "user's reference code" in automated requests for MVRs and then echo the code back when recording MVRs in response to such requests.

14. Equifax did not compile, collect or analyze any of the information contained in the MVR; it merely transmitted to its clients the same MVR which a DMV supplied in response to a client request presented by Equifax.

15. Equifax made no use whatsoever of an MVR for its own account and never charged the same MVR to the account of more than one client.

16. Equifax never, in the normal course of business, requested an MVR from a DMV without first having been requested to do so specifically by a client.

17. Equifax retained no copies of, or information from, previously ordered MVRs and maintained no data base of information from which it could respond to a future request for an MVR by a client.

18. Equifax was not permitted by its clients to divulge the information in the MVRs to third parties.

19. Both Equifax and its clients viewed an MVR as owned by the client at the moment the MVR was received by Equifax on the client's behalf.

20. Equifax did not guarantee the accuracy of the MVR information, but merely guaranteed that it was exactly the same information provided by the DMV in response to a request.

21. If the customers of an insurance company complained that the MVR was erroneous, the insurance company would advise its customers to contact the DMV and not Equifax.

22. All DMVs charged a registry fee for providing an MVR. Equifax advanced the

registry fee on behalf of its clients and billed the clients later for reimbursement.

23. Equifax maintained escrow accounts in its own name with DMVs for the advance of MVR registry fees on behalf of Equifax's clients. The DMVs drew on the accounts for payment of such registry fees.

24. Equifax charged its clients a service fee, on a per unit basis, for its services in requesting and delivering an MVR on the clients' behalf.

25. The service fees and registry fee reimbursement were separately stated on Equifax bills to its clients.

26. Equifax's clients considered themselves obligated to pay Equifax its service fee and to reimburse Equifax for the state registry fee upon making their requests to Equifax for an MVR, not upon delivery of the MVR.

27. If a requested MVR could not be found, a DMV would generate what was called a "no hit". A "no hit" was caused by the client providing erroneous information.

28. If a client request presented by Equifax resulted in a "no hit" rather than receipt of an MVR, the client still paid Equifax its service fee and reimbursed the registry fee.

29. Both Equifax and its clients viewed the MVR service as a sophisticated courier or delivery service.

30. The insurance company clients indicated to insurance applicants and consumers that DMVs, not Equifax, were the source of the MVRs.

31. Except for Wisconsin in 1980 only, Equifax did not advance any sales tax on registry fees for MVRs on behalf of its clients during the audit period in any states, including New York; no sales taxes were imposed on such registry fees.

32. The New York State DMV does not restrict access to MVRs; any person or entity may obtain a New York MVR on any New York driver.

33. In a number of other states, approximately 20 in number, including California, Pennsylvania, Connecticut, Kansas, Washington, Georgia, North Carolina, Arkansas, and Virginia, access to MVRs is restricted.

34. Typically in those states where access to MVRs is restricted, the restrictions are based upon permissible purposes for obtaining the information, such as insurance underwriting purposes or other purposes allowed under the Federal Fair Credit Reporting Act. Additional restrictions include availability only to those who have obtained actual authorizations from consumers, prohibition of creating a data base, and limitation on transfer or use of the MVRs to or by the client.

35. Equifax does not underwrite insurance.

36. In order to request and receive MVRs in such restricted access states, Equifax must be acting solely on behalf of an insurance company, as an extension of the company itself.

37. In many restricted access states, Equifax is required, as a condition of being permitted to request MVRs for clients, to provide DMVs with written certification that Equifax is acting as the agent or representative of its insurance company clients in requesting MVRs or that Equifax is requesting MVRs solely on behalf of such clients.

38. The written certifications by Equifax to DMVs that Equifax is acting as its client's agent or representative in requesting MVRs are made with the knowledge and approval of its clients.

39. In many restricted access states, the written certifications of Equifax to DMVs typically further certify that either Equifax or its client has authorization from the consumer to request the MVR; that the MVRs are requested for permissible purposes under the Federal Fair Credit Reporting Act; that Equifax will not create a data base from the MVRs; that Equifax is securing the MVRs solely on behalf of its clients; and that the MVRs will be transmitted to the clients alone and for their sole use.

40. In some restricted access states, e.g., Georgia, Washington and North Carolina, the insurance company client itself must file a certification with the DMV authorizing release of MVRs to Equifax for delivery to the client.

41. In terms of the MVR service performed, Equifax does nothing different in interfacing with DMVs in restricted access states from what it does in states like New York, where access to

MVRs is not restricted by the DMV; Equifax performs the exact same service in all states.

42. The agreements between Equifax and its clients for the MVR service were verbal.

43. Equifax, by its automated MVR system, actively facilitates transactions between DMVs and its clients, making it easier for DMVs to transmit and for clients to secure MVRs, by performing all the accounting and recordkeeping functions involved in paying the registry fees to DMVs for hundreds of insurance companies through one central escrow deposit account with each DMV rather than hundreds of such accounts.

44. In all states, whether access to MVRs is restricted or not, the permitted or required utilization of a "user's reference code" in DMV computer programming for requests presented by Equifax is an institutional recognition that Equifax is only acting on behalf of others, its clients, in requesting MVRs.

45. In accordance with State Administrative Procedure Act § 307(1), petitioner's proposed findings of fact have been generally accepted. It is noted that proposed finding of fact "4" has been modified to conform with the testimony.

CONCLUSIONS OF LAW

A. That section 1105(c)(1) of the Tax Law imposes a sales tax on:

"(c) The receipts from every sale, except for resale of the following services:

(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal and individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news."

B. That Tax Law § 1105(c)(1) imposes tax on the receipts from the service of furnishing information (20 NYCRR 527.3[a][1]). Since petitioner furnishes information, its receipts are subject to the provisions of Tax Law § 1105(c)(1).

C. That the information provided by petitioner was not personal or individual in nature within the meaning of Tax Law § 1105(c)(1). (Cf. Matter of Allstate Insurance Co. v. Tax

Commn. of the State of New York, 115 AD2d 831, affd 67 NY2d 999.) It is noted that even in those states that restrict access to MVRs, anyone who meets the state's certification requirements may obtain MVRs.

D. That petitioner has not established that it was acting in an agency or representative capacity within the meaning of Tax Law § 1105(c)(1) when it obtained MVRs. In reaching this conclusion, it is noted that when one is acting in an agency or representative capacity one is subject to control with respect to both the manner in which the work is performed as well as the result (see generally, 1 NY Jur 2d, Agency, § 8). In this instance, it appears that petitioner's customers were only interested in the result -- obtaining information contained on the MVRs. Consequently, it cannot be said that petitioner was acting in an agency or representative capacity within the meaning of Tax Law § 1105(c)(1). In this regard, it is noted that Tax Law § 1116(a)(1) has no bearing on this matter since the sales which are subject to tax were made by petitioner and not the State of New York.

E. That Tax Law § 1101(b)(3) defines a receipt as "the charge for any service taxable under this article...without any deduction for expenses". In addition, the applicable regulation, which is consistent with such statute, provides that all expenses, regardless of their taxable status, are not deductible from receipts (20 NYCRR 526.5[e]). On the basis of the foregoing, the Audit Division properly concluded that sales tax was due on the portion of the receipts which petitioner charges its clients premised upon the charge for reports imposed by the respective Departments of Motor Vehicles.

F. That the Audit Division is directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated December 28, 1982, in accordance with Finding of Fact "1".

G. That the petition of Equifax Services, Inc. is granted only to the extent of Conclusion of Law "F" and the Audit Division is directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated December 28, 1982, accordingly; the petition is in all other respects denied and the notices of determination and demands for payment

of sales and use taxes due, as modified by the notices of assessment review and as further modified by Conclusion of Law "F", are sustained.

DATED: Albany, New York
October 1, 1987

ADMINISTRATIVE LAW JUDGE