

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
NATIONAL PLANNING DATA CORPORATION
for Revision of a Determination or for Refund
of Sales and Use Taxes under Articles 28 and 29
of the Tax Law for the Periods June 1, 1977
through May 31, 1980 and June 1, 1980 through
August 31, 1982.

DECISION

Petitioner, National Planning Data Corporation, 20 Terrace Hill, Ithaca, New York 14850, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods June 1, 1977 through May 31, 1980 and June 1, 1980 through August 31, 1982 (File Nos. 32028 and 42625).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on September 13, 1983 at 1:15 P.M., with all briefs to be submitted by December 13, 1983. Petitioner appeared by Harter, Secrest & Emery, Esqs. (Michael R. McEvoy, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel). In addition, on August 30, 1983 the Audit Division by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel) and the petitioner by Harter, Secrest & Emery, Esqs. (Michael R. McEvoy, Esq., of counsel) executed two separate stipulations of fact one for each of the periods at issue, which are incorporated herein.

ISSUES

I. Whether purchases by petitioner of computer equipment are exempt from the imposition of sales and use taxes on the basis that such computer equipment

was (i) used by petitioner to produce tangible personal property by manufacturing or processing within the meaning of Tax Law §1115(a)(12) or (ii) used directly and predominantly for research and development in the experimental or laboratory sense within the meaning of Tax Law §1115(a)(10).

II. Whether, pursuant to Tax Law §1105-B, repair and maintenance services with respect to petitioner's computer equipment are subject to sales tax at the reduced rate of two percent from September 1, 1980 to February 28, 1981, and exempt from sales tax thereafter (assuming that the computer equipment is predominantly used in the production of tangible personal property by manufacturing or processing).

FINDINGS OF FACT

1. On September 20, 1980, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner asserting additional use tax due of \$21,059.33 on purchases of \$300,848.00 for the period June 1, 1977 through May 31, 1980. The petitioner conceded that it is liable for tax in the amount of \$6,898.51 on purchases totalling \$98,550.25 consisting of recurring purchases, advertising material purchases, and telephone wats line purchases. The Audit Division conceded that petitioner is not liable for tax in the amount of \$2,268.87 on purchases totalling \$32,412.50 consisting of purchases of computer software, furniture and computer tapes for resale. Remaining at issue are purchases of a computer, computer terminals and air conditioning equipment required for the operation of the computer (hereinafter,

"computer equipment") in the amount of \$169,885.02 representing \$11,891.95 of the total amount of tax asserted in the Notice.¹

2. On December 7, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner asserting additional sales and use tax due of \$36,807.27 on purchases subject to tax of \$525,818.00 for the period June 1, 1980 through August 31, 1982. The petitioner conceded that it is liable for tax in the amount of \$2,330.82 on purchases totalling \$33,297.54 consisting of recurring purchases, furniture and phone purchases. Remaining at issue for this latter period are purchases of a computer and computer terminals (hereinafter, "computer equipment") in the amount of \$450,321.75 representing \$31,522.52 of the total amount of tax asserted in this second Notice. In addition, a portion of the tax asserted to be due on purchases of repair and maintenance services to the computer equipment is also in dispute as follows:

<u>DATE</u>	<u>PURCHASES</u>	<u>TAX ASSERTED</u>	<u>TAX CONCEDED</u>
6/1/80-8/31/80	\$ 3,713.50	\$ 259.95	\$259.95
9/1/80-2/28/81	11,028.32	771.98	220.57
3/1/81-8/31/82	27,457.25	1,922.00	-0-
TOTALS	\$42,199.07	\$2,953.93	\$480.52

3. Petitioner is a New York corporation with its principal office and production facilities located in Ithaca, New York. It is engaged in the business of producing graphics (including charts, graphs and maps), computer

¹ The parties stipulated as follows: "The computer equipment (including the air conditioning equipment which according to the parties was required for the operation of the computer) constitutes a single functioning unit and should be treated as one piece of equipment, all of which is either subject to sales tax or exempt from sales tax."

tapes and printed representations of customer-supplied information or of information which was collected, analyzed, and made publicly available by the United States Department of Commerce, Bureau of the Census (hereinafter, "Census Bureau"). The principal types of petitioner's products may be classified as either graphic products or reproduction products. Its customers include most of the Fortune five hundred corporations and urban planners.

4. With respect to petitioner's graphic products, the petitioner takes customer-supplied or publicly-available Census Bureau data and uses its computer equipment to produce graphs and maps of such information.

For example, petitioner was provided with data by the Church of Jesus Christ of Latter Day Saints concerning responses to the Church's advertising campaign in the Reader's Digest. Petitioner took the data and by use of its computer equipment produced three maps of the United States which displayed such data in a graphic way. The computer equipment, by utilizing a complex computer program called "Odyssey", classified the data and created all of the necessary movements for the pens to draw representational maps.

5. With respect to petitioner's reproduction products, it takes publicly available Census Bureau data and produces exact replications of such data on computer tape or in printed form. It reproduces such data, according to petitioner's vice-president, Peter Paul Zadarlik, Jr., "at a price a bit cheaper than the Bureau of Census itself can sell them for, because of government bureaucracy and overhead."

6. The computer equipment purchased during the first period at issue, June 1, 1977 through May 31, 1980, is used one hundred percent of the time to produce graphic products. The computer equipment purchased during the second period at issue, June 1, 1980 through August 31, 1982, is used thirty percent

of the time to produce graphic products, forty percent of the time to produce reproduction products and the remainder of the time to produce other miscellaneous products (not specifically described in the record herein) and for administrative uses.

7. All of the computer equipment had a useful life in excess of one year and was used directly in the production of petitioner's products.

8. The repair and maintenance services at issue in the December 7, 1982 assessment were performed with respect to the computer equipment at issue in that assessment.

9. Petitioner included in its brief proposed findings of fact and conclusions of law. The proposed findings of fact numbered one through thirteen are incorporated into and made a part of this decision. However, the State Administrative Procedure Act §307 requires a ruling upon each proposed finding of fact only. There is no provision in the law or regulations that requires a ruling on proposed conclusions of law. Therefore, no ruling is made concerning petitioner's proposed conclusions of law, although they were carefully considered in rendering the Conclusions of Law, infra.

CONCLUSIONS OF LAW

A. That Tax Law section 1115(a) exempts certain receipts from sales and use taxes including receipts from the sale of the following:

"(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property...for sale, by manufacturing, processing..."

B. That manufacturing is defined in 20 NYCRR 531.2(b) as follows:

"Manufacturing is the production of tangible personal property that has a different identity from its ingredients.

C. That "processing" is defined in 20 NYCRR 531.2(e) as follows:

"Processing is the performance of any service on tangible personal property which effects a change in the nature, shape or form of the property."

D. That in order for petitioner's computer equipment to be exempt from sales and use tax it must be used to produce tangible personal property for sale by manufacturing or processing. The computer equipment is not involved in manufacturing the graphics, computer tape and printed representations described in Finding of Fact "3", supra. The computer equipment is also not involved in processing as the equipment only acts upon information which is intangible personal property. Therefore petitioner's purchase of computer equipment is properly subject to sales and use taxes.

E. That, pursuant to Tax Law section 1105-B, receipts from the sale of the services of installing, repairing, maintaining or servicing tangible personal property used directly and predominantly in the production of tangible personal property for sale are taxed at the reduced tax rate of two percent from September 1, 1980 to February 28, 1981 and are exempt from the sales tax thereafter. Since the computer equipment was properly subject to sales and use taxes, as noted in Conclusion of Law "D", supra, repair and maintenance services were subject to sales and use taxes at the full tax rate.

F. That petitioner is not entitled to an exemption from tax under Tax Law section 1115(a)(10) because the computer equipment at issue was not used directly and predominantly for research and development in the experimental or laboratory sense.

G. That the Audit Division is directed to modify the notices of determination and demand for payment of sales and use taxes due as agreed to by the parties in accordance with Findings of Fact "1" and "2", supra.


H. That the petition of National Planning Data Corporation is granted to the extent noted in Conclusion of Law "G", supra, and that except as so granted, the petition in all other respects is denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 28 1985


PRESIDENT


COMMISSIONER


COMMISSIONER