

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DATA INPUT SERVICES	:	DECISION
DIVISION OF ADD-A-GIRL, INC.	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period September 1, 1978	:	
through August 31, 1981.	:	

Petitioner, Data Input Services, Division of Add-A-Girl, Inc., 907 Fuhrman Boulevard, Buffalo, New York 14203, 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 period September 1, 1978 through August 31, 1981 (File No. 39407).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on April 25, 1984 at 9:15 A.M., with all briefs to be submitted by June 25, 1984. Petitioner appeared by John Papsidero, Esq. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

#### ISSUE

Whether petitioner's converting of data furnished by its customers to punch card form constituted the sale of tangible personal property, or whether such service constituted the furnishing of information which is personal or individual in nature and thereby excluded from the tax imposed under section 1105(c)(1) of the Tax Law.

#### FINDINGS OF FACT

1. Petitioner, Data Input Services, Division of Add-A-Girl, Inc., was engaged in the business of converting information furnished by its customers to

punch card form for use on the customers' computers. Typical information included payroll, names and addresses and inventory. The punch cards were supplied by petitioner. Petitioner did not analyze the information, furnish new information, or in any way change the information.

2. On May 12, 1982, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period September 1, 1978 through August 31, 1981 for taxes due of \$4,071.03, plus interest of \$775.55, for a total of \$4,846.58.

3. Petitioner was not registered as a vendor for sales tax purposes and did not file any sales tax returns from the inception of the business in 1968 until the business was closed in December, 1981. The Audit Division limited the audit to a three year period.

4. At the hearing, petitioner produced resale certificates from certain customers. The Audit Division conceded that based on such certificates, the liability should be revised to \$3,315.90. The Audit Division also conceded that the tax should be further reduced by \$563.32 to reflect a use tax payment by one of petitioner's customers.

5. Petitioner argued that it was providing information which is personal or individual in nature and not incorporated into reports furnished to other persons, and that therefore, its information service is excluded from the tax imposed under section 1105(c)(1) of the Tax Law. Petitioner argued further that its service was not taxable under section 1105(c)(2) since the customers did not directly or indirectly furnish the cards for keypunching.

The Audit Division took the position that since petitioner furnished the cards on which the purchasers' data were recorded, the sale was of tangible personal property and subject to tax under section 1105(a) of the Tax Law.

6. The Technical Services Bureau of the Department of Taxation and Finance issued a publication dated February 9, 1981 regarding the applicability of sales and use taxes on data entry techniques. Said publication stated that a vendor who performs keypunching services, as well as furnishes the card, was engaged in the sale of tangible personal property.

Notwithstanding the arguments set forth in Finding of Fact "5", petitioner maintained that the ruling should not be applied retroactively.

#### CONCLUSIONS OF LAW

A. That section 1101(c)(1) of the Tax Law imposes sales tax on:

"(t)he furnishing of information by printed, mimeograph or multigraphed matter or 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 not or may not be substantially incorporated in reports furnished to other persons..."

B. That petitioner did not furnish its customers with any information they did not previously have. Petitioner merely converted the information received from the customers from one form or medium to another without interpreting or recasting it. Accordingly, petitioner's sales were not of information services but rather, of tangible personal property and therefore subject to the tax imposed pursuant to section 1105(a) of the Tax Law (Matter of Finserv Computer Corporation v. Tully, 94 A.D.2d 197).

C. That the petition of Data Input Services, Division of Add-A-Girl, Inc., is granted to the extent that the tax is reduced to \$2,752.58; that in all

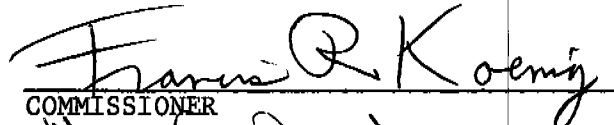
other respects, the petition is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 12, 1982 is sustained.


DATED: Albany, New York

DEC 31 1984

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER