

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

COMPUTONE SYSTEMS, INC.

DECISION

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 June 1, 1979
through November 30, 1981.

Petitioner, Computone Systems, Inc., 1 Dunwoody Park, Atlanta, Georgia 30338, filed a petition for redetermination of a deficiency or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1979 through November 30, 1981 (File Nos. 41041 and 45523).

A hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, W.A. Harriman State Office Building Campus, Albany, New York on September 11, 1986 at 1:15 P.M., with all briefs to be submitted by December 1, 1986. Petitioner appeared by Burke, Cavalier & Lyman, Esqs. (Charles I. Schachter, Esq. and John Miller, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUES

I. Whether New York may impose sales and use tax upon the sale of reports which were generated by petitioner's computer in Georgia.

11. Whether petitioner was required to collect and remit sales and use tax on the sales of reports to its customers with a New York billing address.

FINDINGS OF FACT

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

<u>Date of Notice</u>	<u>Period</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
9/20/82	6/1/79 - 8/31/79	\$ 5,779.19	\$1,810.68	\$ 7,589.87
12/20/82	9/1/79 - 11/30/79	2,451.38	798.83	3,250.21
3/21/83	12/1/79 - 11/30/81	16,441.39	3,915.21	20,356.60

2. After the foregoing notices were issued, the Audit Division reduced the amount of tax asserted to be due in each of the notices dated September 20, 1982 and December 20, 1982 to \$1,088.12. Accordingly, the total amount of tax asserted to be due during the periods involved herein is \$18,617.63.

3. The assessments were premised upon the Audit Division's position that certain computer-generated reports furnished by petitioner to its customers were subject to sales and use tax.

4. During the periods in issue, petitioner was engaged in the business activity of providing computer-generated information reports to insurance agents and financial advisors. Petitioner's customers gained access to petitioner's computer in Atlanta, Georgia through a portable computer and a telephone.

5. The reports involved herein have been designated by petitioner as the ninety-five and ninety-six series information reports. The ninety-five series concerned various types of life insurance policies such as term and whole life. The ninety-six series concerned universal life insurance. The foregoing reports provided information with respect to the premium amounts and benefits.

6. Since petitioner did not maintain records as to whom the reports were sent, the Audit Division determined that tax was due on those receipts wherein petitioner's customers had a New York billing address.

7. In order to ascertain the amount of tax due, the Audit Division, with petitioner's consent, examined microfiche copies of petitioner's sales invoices which recorded computer usage for the period January 1, 1981 through November 30, 1981. For the test period, the New York billings on the ninety-five and ninety-six series information reports was \$207,272.00, whereas the billing nationwide on these types of reports was \$3,770,385.00. Utilizing these amounts, the Audit Division determined that 5.497 percent of petitioner's national billings were from New York.

8. Utilizing petitioner's records, the Audit Division determined that the ninety-five series reports accounted for 60.447 percent of total computer usage and the ninety-six series reports consisted of 11.246 percent of total computer usage.

9. The Audit Division then multiplied the total nationwide computer usage of \$7,048,860.00 by the New York percentage of 5.497 to arrive at the New York computer usage of \$387,500.00. To determine the tax due on the ninety-five and ninety-six series reports, the \$387,500.00 was multiplied by, respectively 60.447 percent and 11.246 percent. These amounts were then multiplied by an average New York State sales and use tax rate of 7.267 percent to ascertain the amount of tax due.

10. Petitioner provided computer services through approximately 220 different programs to life insurance agents and financial planners. Most of the revenue was derived from a financial needs analysis which was followed by an illustration of the life insurance product which the agent was attempting to sell. During the period in issue, the only way to access petitioner's computer was through petitioner's portable computer.

11. Prior to 1978, petitioner had only voice response terminals available. After 1978, both voice and printing response terminals were available. Petitioner charged its customers a minimum amount in order to maintain access to the computer. The minimum amount charged a customer with only a voice response capability was \$20.00 a month. The minimum amount charged for a unit with a printer was \$25.00 a month.

12. When a customer had a terminal with a printer, the customer had the option of receiving a printed copy of the report at the particular location within a matter of minutes or having the report mailed to them from Atlanta. Customers rarely chose to have a report mailed to them.

13. Typically, a customer answered questions found on a template which was placed on a portable computer, transmitted the information over a telephone line to petitioner's computer in Atlanta and received a report generated from the printer.

14. The templates elicited the information which the insurance agent or financial planner needed to gather in order to customize the reports to the individual. The information on the templates would include the individual's age, spouse's age, youngest child's age, desired income and social security benefits. The information was entered by turning switches on the portable computer to the appropriate number. Once the information was entered into the portable unit, the customer would dial the phone number of the computer in Atlanta and then transmit the information over the telephone line.

15. Petitioner's customers might input as many as twenty variables to obtain the reports in issue. However, the reports at issue required the input of at least twelve variables.

16. Petitioner's data base contained various insurance rates based on different ages and lifestyles. Petitioner's customers did not have access to the data base.

17. Upon input of the customer's variables, information in the data base was applied to the inputted criteria and a computation was made.

18. Once the computer ran its program, all information received over the telephone was destroyed. During the period of time information was retained by the computer to be acted upon, the information was not accessible to anyone with a portable computer.

19. Once a computation was completed, the only data retained from the transaction was the date and time of the telephone call, the program run and how long the transmission lasted.

20. An individual could use one of petitioner's portable terminals from virtually anywhere in the world. Since Computone had Watts line capability, a call from nearly anywhere in the United States was toll free. Petitioner had no way of knowing from where a particular call was made.

CONCLUSIONS OF LAW

A. That an information service is defined by 20 NYCRR 527.3(a)(2) as "[t]he collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons...".

B. That since petitioner collects, compiles or analyzes data and engages in the furnishing of information, it constitutes an information service within the meaning of respectively, section 1105(c)(1) of the Tax Law and 20 NYCRR 527.3(a)(2) .

C. That the term "'vendor' includes... [a] person making sales of... services, the receipts from which are taxed by..." Article 28 of the New York

Tax Law (Tax Law § 1101(b)(8)(i)(A)). Section 1131(1) of the Tax Law defines "[p]ersons required to collect tax" and "person required to collect any tax imposed by this article" to include every vendor of tangible personal property or services.

D. That the service at issue herein is the providing of information by a printed report. Since reports were either created in New York by a printer or delivered to New York in printed form, petitioner was providing a service in New York. Accordingly, petitioner was a vendor within the meaning of Tax Law § 1101(b)(8)(i)(A) and was responsible to collect sales and use tax. It is recognized that orally transmitted reports are not subject to sales and use tax (20 NYCRR 527.3(b)(3)). However, petitioner has not shown what portion of its New York receipts arose from orally transmitted reports. Therefore, there is no basis for taking said oral reports into account.

E. That the information which was sold was not exempt from tax under Tax Law § 1105(c)(1) by virtue of being personal or individual in nature. This exclusion applies only to "uniquely personal information" (Allstate Insurance Co. v. Tax Commission of State of New York, 115 AD2d 831, 834 affd 67 NY2d 999). Although the information entered into the computer may have been personal or individual in nature, the information which was sold, i.e. premium amounts and benefits, was not uniquely personal or individual in nature. In this regard, it is noted that 20 NYCRR 527.3(b)(2) example 3 is inapposite since it applies only to personal or individual payroll programs.

F. That the petition of Computone Systems, Inc. is denied and the notices of determination and demands for payment of sales and use taxes due, as modified in Finding of Fact "2", are sustained.

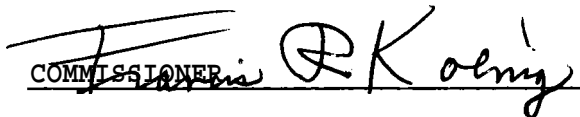
DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT



COMMISSIONER



COMMISSIONER