

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DATA RESOURCES 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, 1976
through November 30, 1981.

Petitioner, Data Resources, Inc., 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, 1976 through November 30, 1981 (File No.
49605).

On December 12, 1986, petitioners waived their right to a hearing and
requested the State Tax Commission to render a decision based on the entire
record contained in their file, with all briefs to be submitted by March 17,
1987. After due consideration, the State Tax Commission hereby renders the
following decision.

ISSUE

Whether petitioner was required to collect and remit sales tax on its
sales of information to its customers.

FINDINGS OF FACT

Preliminary Findings

1. On November 2, 1983, the Audit Division issued two notices of
determination and demands for payment of sales and use taxes

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- 1 With the exception of the preliminary findings, the findings of fact
are based upon the stipulation entered into by the parties.

due to petitioner, Data Resources, Inc. ("DRI"). The first notice assessed sales and use taxes for the period June 1, 1976 through November 30, 1979 of \$302,199.42 plus interest of \$161,727.29 for a total amount due of \$463,926.71. The second notice assessed sales and use taxes for the period December 1, 1979 November 30, 1981 in the amount of \$323,792.50 plus interest of \$100,964.87 for a total amount due of \$424,757.37.

2. The amount of tax asserted to be due was premised upon \$1,884.46 of sales and use ~~tax~~ on receipts arising from the sales of reviews; \$3,995.84 of sales and use tax on purchases of recurring and fixed assets; \$185,186.17 of sales and use tax on receipts arising from the sales of subscriptions; and \$434,925.46 of sales and use tax on receipts arising from the sale of time sharing.
3. In its petition, DRI has conceded that it is liable for the deficiency of sales and use tax on its receipts from the sales of reviews, \$1,884.46, and sales and use tax on purchases of recurring and fixed assets, \$3,995.84.

General

4. DRI is in the business of selling an information service.
5. DRI's revenues from the sale of the information service are derived from three separate features of the information service. These features and the approximate amount of revenues attributable to each are: (1) subscription fees, one third of DRI's revenues; (2) time sharing charges for use of DRI's computer in

Lexington, Massachusetts, one half of DRI's revenues; and (3) contract research, the balance of DRI's revenues.

Subscription Fees

6. The subscription fee entitles a customer to gain access to those models and data bases in the DRI computer which make up a particular DRI service.
7. Subscription fees for access to the models and data bases in the computer which make up various DRI services range from **\$7,500 to \$30,000.**
8. The subscription fee for the U.S. Economic Service, DRI's most popular service, is approximately \$15,800. Subscription fees from the U.S. Economic Service account for about 40 percent of the one third of the total revenues which are derived from subscription fees.
9. The subscription fee entitles the customer to a "user code" which will permit him to connect a terminal or screen with DRI's computer in Lexington, Massachusetts.
10. The terminals are always owned by the customer or leased from outsiders. DRI has no interest in the terminals.
11. The customer connects his terminal with the DRI computer in Lexington by use of a regular telephone line connection.
12. The customer may make the connection with the DRI computer in Lexington at any location reachable by regular telephone lines.
13. The subscription fee also entitles the customer to an instruction manual explaining how to utilize the DRI service, some DRI

publications which meet the requisite tests for exempt periodicals, and three tickets to each of four annual conferences conducted in Lexington by DRI's top economists.

14. The subscription fee also entitles a customer to receive up to 84 hours of personal and individualized consulting time with DRI systems people, programmers and business planners. When and if customers exceed their 84 hours of consulting time covered by the subscription fee as most customers do, DRI charges a fee for additional consulting of \$38 per hour, which amount has not changed since the audit period.
15. The consulting takes place on the customer's premises.
16. The purpose of the consulting is to analyze the customer's requirements and to customize various programs and procedures designed to achieve the customer's individual objectives in utilizing the particular DRI service to which he has subscribed.

Time Sharing

17. A customer's use of the DRI service involves the customer first "inputting" data into the DRI computer.
18. The data which is "input" has been developed by the customer and is particular to his business or industry.
19. While this "proprietary" data is "in" the DRI computer, it cannot be extracted or otherwise utilized by anyone (including DRI itself) other than the customer who has stored the data for his own use.
20. The data which is "input" by the customer is "in" the DRI computer in the form of electronic signals.

21. The DRI models as well as the information stored by DRI in its computers are "in" the DRI computer in the form of electronic signals.
22. The electronic signals are on tapes which can be activated by other electronic signals and made to produce both machine readable messages and human readable messages.
23. None of the data in the DRI computers is written or printed or mimeographed or multigraphed matter.
24. Employing a combination of the proprietary data "input" by the customer and DRI's models and data bases, the typical DRI customer obtains customized forecasts, predictions, projections and analyses.
25. These forecasts, predictions, projections and analyses purport to tell the customer how the DRI predictions on the economy in general can be expected to affect his business in particular, given the statistics regarding his business which have been added by the customer to the data already in the DRI computer.
26. The forecasts, predictions, projections and analyses are "prepared" in the DRI computer in Lexington.
27. The forecasts, predictions, projections and analyses are in the DRI computer in Lexington in the form of electronic signals.
28. No printed, mimeographed, or multigraphed matter is created by DRI.
29. The customer receives no printed, mimeographed, or multigraphed matter and no duplication of any written or printed matter is delivered to the customer.

30. The forecasts, predictions, projections and analyses are furnished by means of an electronic signal interacting between DRI's transmission facilities in Lexington and the customer's screen or terminal in New York or wherever else the customer is located.
31. The interaction between the DRI computer in Lexington and the customer's screen or terminal in New York does not involve the duplication of written or printed matter.
32. The service performed by the DRI computer is performed in Lexington.
33. ~~The~~ electronic signals are transmitted from DRI's headquarters in Lexington to the customer's location in New York via regular telephone lines.
34. The customer by use of his own terminal activates the electronic signals which travel from Lexington to the customer's screen in New York or elsewhere pursuant to the contract with DRI.
35. A customer could use a screen or terminal located in any state and bring the electronic signal from Lexington to that other state.
36. DRI has no control over where customers cause the electronic signals to be transmitted.
37. The forecasts, predictions, projections and analyses received by a customer contain the customer's own data on his business combined with DRI data.
38. The information contained in forecasts, predictions, projections and analyses furnished to a customer cannot because of contractual

limitations be incorporated in the forecasts, predictions, projections and analyses furnished to another customer because of the confidentiality of the first customer's information.

39. The information provided to a customer is based on the data he has "input" into the DRI computer which includes the customer's statistics on his business as well as suppositions and hypothetical alternatives he wishes to test.
40. Customers, generally, do not access the DRI computer for a single piece of information having no relationship to any data "input" by the customer, e.g. the gross national product for the United States for *1984*, because of the prohibitive cost.
41. The possibility of two customers having "input" the same data, i.e. figures of their industry as well as suppositions and hypothetical alternatives, is almost nonexistent.
42. There are an infinite variety of electronic responses to the "inquiries" of customers where the "inquiries" are posed in the **form** of figures of their industry, suppositions and hypothetical alternatives to be applied to economic models.
43. Much **of** the data "in" DRI's computer is data purchased by DRI from vendors such as Interactive Data Services, Inc., Muller Data Corporation, TS Info Systems, Inc. and Data Systems, Inc., which vendors charge DRI the appropriate sales tax applicable to sales of nonexempt information services.
44. DRI employs a wide variety of charges for various types of time sharing activities.

Time Sharing - Software License Charges

45. There is a monthly service charge, averaging \$300 per month, for use by the customer of software located in Lexington which enables the customer to communicate electronically with DRI's computer.
46. The software made available to each customer is geared to that customer's individual requirements and its selection requires an analysis of the customer's needs by DRI.

Time Sharing - Connect Time Charges

47. There is a charge, averaging \$25 per hour, for the time during which DRI's computer and the customer's terminal are "connected".
48. This charge is roughly equivalent to the telephone company's charges for the use of its lines to effect the "connection." The "connect time" charges are billed whether or not any "information" is transmitted.

Time Sharing - Information Access Charges

49. A charge of approximately 8¢ per "information resource unit" (IRU) is made for the time it takes the computer to find and access each unit which a customer "calls up" electronically from storage in DRI's computer.
50. The information access charges include billings for the computer time necessary to transfer the stored data from tapes or discs to a "work-station" in DRI's computers in Lexington for use in further processing as well as computer time needed to transform machine readable **symbols** into human readable characters which the customer can see on his screen or terminal.

51. The charge for IRU's consisting of data in which DRI has a proprietary interest is greater than the normal information access charge of 8¢ per IRU.

Time Sharing - Computing Service Charges

52. The time sharing charges for use of DRI's computer to solve problems, make statistical analyses, draw graphs and prepare forecasts average approximately 24¢ per "computer resource unit" (CRU) .

53. A CRU is an interval of time needed to perform one or more "computing" as opposed to "searching" or "retrieving" tasks.

DRI's charges to its customers for CRU's account for a very substantial portion of its total time sharing charges.

Time Sharing - Printing Charges

54. The cost of reproducing the images which are transmitted to a customer's terminal in those cases where the customer wants a hard copy record of data received is borne exclusively by the customer.

55. DRI **has** no facilities for printing a customer's data transmission at Lexington.

56. **If** the customer has a printer attached to his terminal, he can get a printout of the data appearing on his screen by activating the printer.

57. This **is** an activity which does not involve DRI since the printers, like the terminals, are owned by the customer or leased from outsiders.

58. DRI derives no more revenue when a customer elects to use his own equipment to print out data received on his terminal than it does when the customer merely reads the screen and makes no reproduction of the data pictured there.

Contract Research

59. Contract research involves the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons. It has been agreed that DRI's charges for contract research are not subject to the tax on information services imposed by section 1105(c)(1) of the Tax Law.

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 or 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" (emphasis supplied).

- B. 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....!"

- C. That since petitioner collects, compiles and analyzes data, it engages in the furnishing of information and constitutes an information service within

the meaning of respectively, section 1105(c)(1) of the Tax Law and 20 NYCRR 527.3(a) (2) -

D. That the electronic readout or display of information constitutes the furnishing of information "in any other manner" within the meaning of Tax Law § 1105(c)(1) (20 NYCRR 527.3[a][1]; Matter of Murphy Heating Service, Inc., et al. v. Cku, et al., 124 AD2d 907, 908).

E. That the fact that the predictions on the economy pertained to a particular customer's business does not, in and of itself, render the reports personal and individual in nature within the meaning of Tax Law § 1105(c)(1) (see Matter of Towne - Oller & Assoc. v. State Tax Commission, 120 AD2d 873). The information provided herein is more analogous to the type of customer report provided in Matter of Towne - Oller & Assoc. v. State Tax Commission (supra) rather than the uniquely personal information for which the exemption provided for in Tax Law § 1105(c)(1) has been held to apply (*e.g.* Matter of New York Life Ins. Co. v. State Tax Commission, 80 AD2d 675, affd sub nom. Matter of Metropolitan Life Ins. Co. v. State Tax Commission, 55 NY2d 758; Matter of Automatic Data Processing, Inc., State Tax Commission, May 8, 1985). Accordingly, petitioner is not entitled to the exemption provided for in Tax Law § 1105(c)(1).

F. That the petition of Data Resources, Inc. is denied and the notices of determination and demands for payment of sales and use taxes due, dated November 17, 1983 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 28 '1987

R. Andrew Allen
PRESIDENT

Francis R. Kolnig
COMMISSIONER

Mark J. [Signature]
COMMISSIONER