

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Finserv Computer Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax
under Article 28 & 29 of the Tax Law for the Period:
6/1/75 - 2/28/79.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1981, he served the within notice of Decision by certified mail upon Finserv Computer Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Finserv Computer Corp.
1462 Erie Blvd.
Schenectady, NY 12305

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
30th day of October, 1981.

Annice A. Haydel

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Finserv Computer Corp. :

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under Article 28 & 29 of the Tax Law for the :
Period 6/1/75 - 2/28/79.

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of October, 1981, he served the within notice of Decision by certified mail upon E. Guy Roemer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

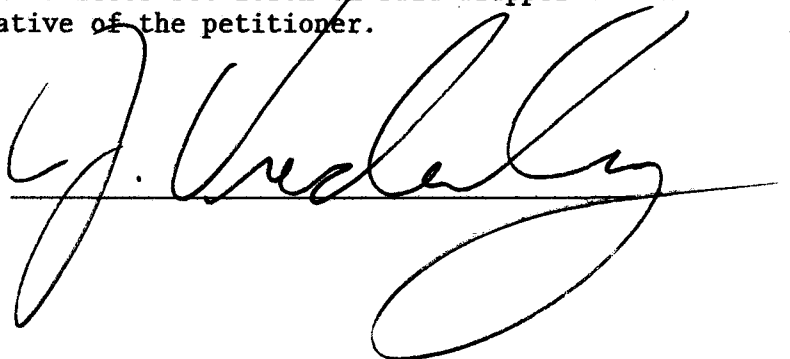
E. Guy Roemer
Roemer & Featherstonhaugh
99 Washington Ave., Suite 1130
Albany, NY 12210

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
30th day of October, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

October 30, 1981

Finserv Computer Corp.
1462 Erie Blvd.
Schenectady, NY 12305

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
E. Guy Roemer
Roemer & Featherstonhaugh
99 Washington Ave., Suite 1130
Albany, NY 12210
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FINSERV COMPUTER CORPORATION	:	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, 1975	:	
through February 28, 1979.	:	

Petitioner, Finserv Computer Corporation, 1462 Erie Boulevard, Schenectady, New York filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 & 29 of the Tax Law for the period June 1, 1975 through February 28, 1979 (File No. 27900).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on October 9, 1980 at 2:45 P.M. Petitioner appeared by E. Guy Roemer, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry Bresler, Esq., of counsel).

ISSUES

I. Whether sales made by petitioner constitute sales of tangible personal property subject to tax under section 1105(a) of the Tax Law or whether the sales made by petitioner constitute an information service which is personal or individual in nature and thereby excluded from tax under section 1105(c)(1).

II. Whether the State Tax Commission is estopped from asserting sales tax on sales which petitioner was led to believe were not taxable.

FINDINGS OF FACT

1. On September 20, 1979, the Audit Division issued two notices of determination and demand for payment of sales and use taxes due against Finserv

Computer Corporation for the period June 1, 1975 through February 28, 1979.

The notices were issued as a result of a field audit and represent the unagreed portion of tax due totaling \$10,471.15 plus minimum interest.

2. Petitioner executed a consent to extend the period of limitation for assessment to September 20, 1979.

3. Petitioner's business activity consisted of the reproduction of its customers' records onto microfilm or microfiche. Data was received from its customers on magnetic tapes. After a series of programming processes, that data was sorted and rearranged on either microfilm or microfiche. Other information was added such as indexing codes and headings for identification. Petitioner furnished the microfilm and microfiche on which the customers' data was recorded.

4. It was the Audit Division's position that the sales made by petitioner constituted the sale of tangible personal property and were subject to tax under section 1105(a) of the Tax Law. The Audit Division examined sales of microfilm and microfiche in their entirety and determined tax due of \$10,471.15. As a result of a conference, the Audit Division conceded that the Notice be reduced to \$10,061.83.

5. It was the petitioner's position that its sales constitute information services which are personal and individual in nature to the recipient and cannot be incorporated in reports or other information furnished to other persons. It therefore argued that such services were excluded from tax under section 1105(c)(1) of the Tax Law.

6. A previous sales tax audit was performed by the Audit Division at which time petitioner's sales of microfilm or microfiche were not held subject to tax nor were its principals informed that such sales were taxable. Therefore,

petitioner argued that it should not be held liable for sales tax it did not collect from its customers. Petitioner offered no evidence to show that it was instructed by the Audit Division that such sales were not subject to tax.

CONCLUSIONS OF LAW

A. That section 1105(c)(1) of the Tax Law imposes a tax upon the sale of information services but excludes from tax the services of furnishing information which is personal or individual in nature and which may not be substantially incorporated in reports furnished to other persons. Petitioner did not furnish its customers with any information its customers did not previously have. Therefore, petitioner's sales were not of information services but rather the rearranging of its customers' information onto a different medium. Since petitioner provided its customers with microfilm or microfiche, petitioner's sales constitute the sale of tangible personal property subject to tax under section 1105(a) of the Tax Law. Petitioner is therefore liable under section 1133(a) of the Tax Law for the tax imposed.

B. That the State Tax Commission is not estopped to correct a mistake of law nor precluded from assessing tax due by its prior actions (Southern Hardwood Traffic Association v. United States, 411 F.2d 563 (1969); Fruehauf Corporation v. Commissioner of Internal Revenue, 356 F.2d 975 (1966)).

C. That the additional sales tax due is reduced to \$10,061.83 pursuant to Finding of Fact "4".

D. That the petition of Finserv Computer Corporation is granted to the extent indicated in Conclusion "C" above; that the Audit Division is directed to accordingly modify the notices of determination and demand for payment of

sales and use taxes due issued September 20, 1979; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

OCT 30 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER