State of Alabama
Department of Revenue
Montgomery, Alabama 36132

GEORGE E. MINGLEDORFF III
Commissioner (Acting)

GEORGE E. MINGLEDORFF III
Assistant Commissioner

LEWIS A. EASTERLY
Secretary

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 94-002

This document may not be used or cited as precedent. Code of Alabama 1975, §40-2A-5(a).

TO:

FROM: Commissioner of Revenue (Acting)
Alabama Department of Revenue

DATE: October 5, 1994

RE: Does the use of satellite technology to send information to subscribers, through transmitting and receiving equipment owned by the provider of the information, subject the provider to sales or use tax liability?

FACTS

The pertinent facts as presented in the request for a Revenue ruling are as follows:

A Company is in the business of providing information to subscribers electronically, using satellite technology to send the information to its subscribers. The information is sent through transmitting equipment, which is owned by the Company, up to a satellite and then down to the subscriber. Each subscriber has data receiving equipment which receives the data and converts it to video text which the subscriber can read on a monitor. The Company retains ownership of the data receiving equipment at all times. If the subscriber cancels the subscription, the equipment is returned to the Company.

The Company provides two information packages. The "basic information package" is the same for every subscriber who signs up for the service. The subscriber pays a one-time start-up fee and then pays a monthly fee for the subscription. There is also a separate rental charge for the equipment provided to the subscriber.

In addition to the "basic information package" a subscriber to the basic package may sign up for "additional services." The additional services are exactly the same for every subscriber who signs up for that service. The subscriber pays an

additional monthly fee for the subscription to the "additional service."

ISSUES

Does the providing of information electronically subject the provider to sales or use tax liability? Is the separately stated rental charge for equipment subject to rental tax?

LAW AND ANALYSIS

The Alabama Sales Tax Statutes found at Code of Alabama 1975 §40-23-1 et seq. levy a sales tax upon the retail sales of tangible personal property. However, the statutes do not define the term "tangible personal property." The Alabama Supreme Court referred to Webster's Dictionary in Curry v. Alabama Power Company, 243 Ala. 53, 8 So.2d 521 (1942) to define "tangible" as meaning "capable of being touched, also perceptible to the touch; Palpable." In State v. Advertiser Company, 257 Ala. 423, 59 So.2d 576 (1952), the Court cited Curry v. Alabama Power Company, supra, and stated that "tangible personal property" is "something that can be seen, felt, handled, sold commercially . . . and has physical substance." In State v. Central Computer Services, Inc., 349 So.2d 1160 (Ala. 1977), the Court held that computer software was not tangible personal property for purposes of the State use tax. The Court held that there was an incidental physical mingling of intangible information and tangible magnetic tapes and punch cards. The Court stated that the essence of the transaction was the purchase of nontaxable tangible information.

Accordingly, the information service provided electronically by the Company using satellite technology is not considered to be tangible personal property for purposes of the Alabama sales tax statutes. In addition, the Company also does not come within the definition of a utility providing utility services for the purposes of the utility gross receipts tax statutes found at §40-21-80 et seq. Although the definition of "telephone services" found at §40-21-80(a)(11) includes a computer exchange service, the term "computer exchange service" does not include the storage of data or information for subsequent retrieval, the retrieval of data or information, or the processing, or reception and processing of data or information intended to change its form or content.

Although the information services provided by the Company would not be subject to either the sales tax or the utility gross receipts tax, the rental of the data receiving equipment, for which the Company receives a separate rental charge from the subscriber, would be subject to the rental tax found at §40-12-220 et seq. The data receiving equipment is clearly

tangible personal property to which the Company retains ownership at all times. The rental tax statute levies a rental tax rate of four percent upon the gross proceeds derived by the lessor from the lease or rental of tangible personal property within this State. The "gross proceeds" is defined as the value accruing from the rental of tangible personal property without any deduction for the cost of the property leased, the cost of materials used, labor or service cost, interest paid or any other expense whatsoever. §40-12-220(4).

Therefore, if the Company executes a separate contract and has a separate charge for the rental of the data receiving equipment, only the equipment rental would be subject to rental tax. In the absence of separate contracts for the information service and the equipment rental, the entire amount received by the Company would be subject to the rental tax.

HOLDING

Based upon the information contained in the request for a Revenue Ruling, the Alabama revenue statutes and court cases do not classify as taxable tangible personal property an electronically transmitted information service. However, since data receiving equipment is tangible personal property which is owned by the Company and for which a separate rental charge is received, the amount received by the Company for the rental of the data receiving equipment would be subject to the four percent rental tax. If there is no separate contract and billing for the rental of the data receiving equipment, the entire amount received by the Company would be considered as taxable gross proceeds from the rental of tangible personal property within Alabama.

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GEORGE E. MINGLEDORFF III
Commissioner of Revenue (Acting)

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