



State of Alabama Department of Revenue

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ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 94-015

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

TO: Representative
Company A

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

DATE: January 5, 1995

RE: Company A's tax liability to Alabama for the separate charge to its clients for parts price updates provided for its standard software application, Company A Parts Inventory.

FACTS

The facts as represented by Company A are as follows:

Company A sells computer systems which include computer hardware consisting of central processing units and peripheral equipment and licenses various industry-specific computer software applications to automobile, truck, motorcycle, industrial vehicle and agricultural equipment dealers. The separate software applications range from back-office accounting and inventory control to front-office showroom traffic tracking and vehicle financing. The size of the dealer clients ranges from single brand dealers to "mega-dealers" who carry multiple brands. Company A's clients base includes domestic and foreign automobile, truck, motorcycle, industrial vehicle and agricultural franchises.

Company A offers approximately 30 software applications which represent standard software offered universally to all clients. Each standard application has several alternative "set-up" modification options, most of which are installed or "set up" by clients. Also, in a few circumstances, the taxpayer will reprogram or "customize" a standard application. Therefore, the software licensed by each client is different only to the extent that set-up modifications may vary or, in

limited situations, to the extent that the standard application is customized.

One of the taxpayer's 30 standard software applications, marketed under the name Company A Parts Inventory, enables clients to monitor all aspects of their inventory more accurately by providing stock-order calculations and other analyses, pricing, appreciation and depreciation reports, pilferage control, etc. Clients using Company A's micro-computer systems to process their inventory are provided with Parts Price update information for this software application on a regular basis by Company A since vehicle and equipment manufacturers frequently change these vehicle/equipment parts prices.

Company A collects the price information from the manufacturers and either (1) inputs the information onto magnetic tapes for distribution to the clients, who load the information onto their micro-computer and then return the tape to Company A for re-use or (2) electronically (no magnetic tape is necessary) conveys the information to the client. When magnetic tapes are used, clients are not charged for the tape itself, even though a refundable deposit of \$25.00 is required for the tape. The deposit is credited to the client when the tape is returned.

The Company A computer systems require that clients be able to interact with Company A via modem. This is referred to as "on-line access". This access provides for both electronic and manual update of the system software. The term "updates" generally refers to database changes, such as changes in auto parts prices by manufacturers (referred to in the preceding paragraph). Such changes occur on a frequent basis. As described above, these updates can be delivered electronically or by magnetic tape to the clients. The Parts Inventory software is not useful without current parts price information. The value of the inventory control software (Company A Parts Inventory) provided by Company A is entirely dependent on the accuracy of the Parts Price information. The medium upon which the information may be conveyed to the client (such as magnetic tape) is irrelevant. The client's primary objective and chief concern is the accuracy of the inventory control processing facilitated by current Parts Price information.

Company A releases an average of 20 - 30 upgrades per client each year or 2 - 4 upgrades per software application. Company A charges a separate charge for the Parts Price updates apart from the software licensing fee for the application, Company A Parts Inventory. The taxpayer is currently collecting sales tax on such charges and remitting such tax collected to the State of Alabama.

ISSUES

Whether information transmitted electronically or by magnetic-tape is subject to Alabama's Sales and Use tax.

LAW AND ANALYSIS

Code of Alabama 1975 §40-23-2(1) (1990 Supplement), provides in pertinent part that:

There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:

Upon every person, firm, or corporation, (including the State of Alabama and its Alcoholic Beverage Control Board in the sale of alcoholic beverages of all kinds, the University of Alabama, Auburn University, and all other institutions of higher learning in the state, whether the institutions be denominational, state, county, or municipal institutions) engaged or continuing within this state, in the business of selling at retail any tangible personal property whatsoever,... an amount equal to four percent of the gross proceeds of sales of the business except where a different amount is expressly provided herein. (Emphasis added.)

The Supreme Court of Alabama has held that computer software, consisting of information transmitted by means of cards and tapes, is not tangible personal property subject to Alabama sales and use tax, where the essence of such transaction is the purchase of nontaxable, intangible information. State of Alabama v. Central Computer Services, 349 So.2d 1160, 1163 (Ala. Civ. App. 1977).

Based on the particular facts of this case the information provided by Company A to its clients is transmitted electronically or by magnetic tape to update the Company A parts Inventory Software. As provided above, Alabama law does not embrace information transmitted electronically or by magnetic-tape as tangible personal property.

HOLDING

Pursuant to Alabama law, information transmitted electronically or by magnetic tape does not constitute tangible personal property. Therefore, the separate charge by Company A to its clients for the parts price updates transmitted electronically or by magnetic tape, is not subject to Alabama sales and use tax.



GEORGE E. MINGLEDORFF III

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