

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-94 (20)S
Sales Tax
April 25, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S931130C

On November 30, 1993, a Petition for Advisory Opinion was received from The Beeper People, Inc., 310 State Street, Albany, New York 12210.

The issue raised by Petitioner, The Beeper People, Inc., is whether the purchase of voice mail equipment used to interface with a telephone switching network and provide voice record and storage services to telemessaging customers is exempt from sales tax under Section 1115(a)(12) of the Tax Law.

Petitioner purchases voice mail equipment solely for the purpose of providing voice record and storage services to its telemessaging customers. This equipment is used to interface with the telephone switching network. The equipment is used at the initiation and destination of telephone communication.

Section 1105(b) of the Tax Law imposes a sales tax upon: "The receipts from every sale, other than sales for resale . . . of telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service."

Section 1115(a)(12) of the Tax Law provides an exemption for:

Machinery and equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining, or extracting, or telephone central office equipment or station apparatus or comparable telegraph equipment for use directly and predominantly in receiving at destination or initiating and switching telephone or telegraph communication.

Section 528.13(f) of the Sales and Use Tax regulations provides:

(f) Telephone and Telegraph equipment. (1) Telephone and telegraph central office equipment and station apparatus, used directly and predominantly in receiving at destination, initiating or switching telephone and telegraph communication is exempt, when such equipment and apparatus is purchased or leased by the vendor of such service for sale.

Section 528.13(c) of the Sales and Use Tax Regulations defines directly and predominantly:

Directly and predominantly. (1) Directly means the machinery or equipment must, during the production phase of a process:

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- (i) act upon or effect a change in material to form the product to be sold, or
- (ii) have an active causal relationship in the production of the product to be sold, or
- (iii) be used in the handling, storage, or conveyance of materials or the product to be sold, or
- (iv) be used to place the product to be sold in the package in which it will enter the stream of commerce.

Voice mail is subject to the sales tax imposed under Section 1105(b) of the Tax Law. Tigon Corp., Adv Op Comm T & F, July 28, 1989, TSB-A-89(25)S.

Since Petitioner is providing a service that is subject to sales tax under Section 1105(b) of the Tax Law, equipment purchased by Petitioner that is used to interface with a telephone switching network and provide voice record and storage services to telemessaging customers, qualifies for exemption from sales tax in accordance with Section 1115(a)(12) of the Tax Law and Sections 528.13(c) and (f) of the Sales and Use Tax Regulations, provided such equipment is for use directly and predominantly in receiving at destination or initiating or switching telephone or telegraph communications.

DATED: April 25, 1994

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.