

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-02(53)S
Sales Tax
November 6, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020221A

On February 21, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from Colwell & Salmon Communications Inc., 24 Computer Drive West, Albany, New York, 12205.

The issue raised by Petitioner, Colwell & Salmon Communications Inc., is whether the telephone number verification services described below are subject to sales and compensating use tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a teleservices and marketing research firm. Names of individuals are provided to Petitioner by its clients. Some of Petitioner's clients request that Petitioner verify the accuracy of the telephone numbers that are on the clients' files. A client sends Petitioner a list of customers and, if available, the customer's phone numbers. Petitioner sends a list of names to any of several companies that provide telephone number verification services which append missing telephone numbers and update inaccurate telephone numbers.

The names and telephone numbers are corrected by the service providers and then returned to Petitioner to be used only by Petitioner. It is unlikely that other customers of the verification services will receive the identical list of names and numbers.

Applicable Law

Section 1105 of the Tax Law provides, in part:

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

* * *

(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, and excluding meteorological services.

* * *

(9)(i) The furnishing or provision of an entertainment service or of an information service (but not an information service subject to tax under paragraph one of this subdivision), which is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature, such as entertainment or information services provided through 800 or 900 numbers or mass announcement services or interactive information network services. Provided, however, that in no event (i) shall the furnishing or provision of an information service be taxed under this paragraph unless it would otherwise be subject to taxation under paragraph one of this subdivision if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner nor (ii) shall the provision of cable television service to customers be taxed under this paragraph.

(ii) Notwithstanding the rate and date set forth in the opening undesignated paragraph of this section and notwithstanding the opening undesignated paragraph of this subdivision, on and after September first, nineteen hundred ninety-three, in addition to any other tax imposed under this section, and in addition to any other tax or fee imposed under any other provision of law, there is hereby imposed and there shall be paid an additional tax at the rate of five percent upon the receipts which are subject to tax under subparagraph (i) of this paragraph on the furnishing or provision of an entertainment or information service which is received by the customer exclusively in an aural manner. Such additional tax shall not be imposed by section eleven hundred seven, eleven hundred eight or eleven hundred nine of this article and shall not be included among the taxes authorized to be imposed pursuant to the authority of article twenty-nine of this chapter.

Opinion

Petitioner subscribes to several address and telephone number verification services. The service provider receives a list of individuals' names and telephone numbers from Petitioner. If a telephone number is missing from the list that Petitioner provides, the service provider adds the number. If a telephone number is not current or otherwise incorrect, the service provider corrects

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it and adds it to the listing. It is reasonable to assume that Petitioner's lists are compared by the service providers to a database obtained from an overarching source, such as publishers of telephone books or telephone companies. Petitioner contends that its listing of individuals' names is unique and, therefore, the information furnished to Petitioner regarding corrected telephone numbers represents information which is personal or individual in nature.

In Towne-Oller and Assoc. v. State Tax Commission, 120 AD2d 873, the court held that the reports at issue, although tailored to satisfy the information request of the client, were not of a personal or individual character since the reports were created from the same raw data base used in preparation of similar reports to other customers, and such data base was derived from one general source.

In the instant case, Petitioner, as a subscriber to a telephone number verification service contacts its service provider to receive information pertaining to an individual's telephone number. The service provider furnishes updated and correct telephone numbers to assist Petitioner in compiling an accurate and up-to-date telephone listing for the individual names provided by Petitioner. Such information is presumably made available to Petitioner from a common data base which is used to satisfy all of the service provider subscriber inquiries.

In accordance with Section 1105(c)(1) of the Tax Law, the furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including electronic readout or display, is subject to sales and use tax unless the information provided is personal or individual in nature and is not or may not be substantially incorporated into reports furnished to other persons. In accordance with Section 1105(c)(9) of the Tax Law, the furnishing of information aurally by means of telephone is subject to sales tax provided it would otherwise be subject to taxation under Section 1105(c)(1) if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner. An information service may be subject to tax under either Section 1105(c)(1) or Section 1105(c)(9), but not both.

Pursuant to Towne-Oller and Assoc. v. State Tax Commission, *supra*, information, although tailored to satisfy the request of a particular client, is not personal or individual in nature if created from the same raw database used in preparation of similar reports to other customers. Accordingly, since Petitioner presumably receives information from the same database used by its service providers for other subscribers, the information furnished in printed form, orally or on-line is not personal or individual in nature. If Petitioner purchases this information for its own use and consumption in performing teleservices and market research for its clients, and not for resale by Petitioner to its clients, the purchases are subject to the State and local sales and use taxes imposed pursuant to Section 1105(c)(1) or 1105(c)(9) of the Tax Law. It is noted that if the purchases are subject to the tax imposed under Section 1105(c)(1) the State rate is 4% and if the purchases are subject to the tax imposed under Section 1105(c)(9) on information services provided aurally by

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means of telephone, the State rate is 9%. In addition, Petitioner's purchases of telephone verification service are subject to the applicable local tax rate.

DATED: November 6, 2002

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

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