

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

TSB-A-03(6)S  
Sales Tax  
March 3, 2003

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S001127A

On November 27, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Biscotti, Toback and Co., CPA's, PC, 100 Merrick Road, Rockville Centre, New York 11570. Petitioner, Biscotti, Toback and Co., CPA's, PC, submitted additional information with respect to the Petition on October 10, 2002.

The issue raised by Petitioner is whether fees for the provision of office rental, telephone services, and other general clerical and office services as described below are subject to sales and use tax.

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

Corporation X will charge a membership fee to various small businesses in New York State. The membership fee would entitle the businesses to have office space, and office equipment, available for use throughout the month and to utilize conference rooms for meetings a certain number of days a month. These small businesses would pay a membership fee with a median price of \$200 per month. Additional membership fees would be required for each member of an affiliated group of businesses. Day memberships and associate memberships are available for a reduced fee. In addition to the use of office and conference room space and equipment as part of the membership fee, employees of Corporation X will perform general clerical and office services on behalf of each member. Corporation X offers several different membership plans which provide different levels of services. The monthly membership fee is higher for plans that provide additional services. Each member would be entitled to most or all of the following general clerical or office services, and office facilities, depending on the membership plan, provided as part of its membership privileges without an additional charge:

- A. Locked mailbox
- B. Dedicated business phone lines
- C. The use of photocopy and fax machines
- D. Professional address
- E. Voice mailbox
- F. Receptionist, pick-up/drop off
- G. Secretarial services
- H. Live answer tele-secretarial services, 200 calls per month
- I. Use of conference rooms for meetings
- J. High speed DSL (digital subscriber lines) and modem lines

Sample invoices submitted by Petitioner indicate that the membership fee is charged as a flat amount.

For an additional charge, members may separately purchase the following "A La Carte" services:

1. Small conference room at an hourly rate
2. Standard office at an hourly fee
3. After hours access at an hourly fee
4. 800 number at an hourly fee
5. Additional long distance account at a monthly fee
6. Bell Atlantic directory listing at a monthly fee
7. Long distance calls which will be billed to each member at 12½ cents per minute
8. Live answer tele-secretarial services for over calls (over 200 per month limit as per H above) at a nominal fee per call
9. Handle third party messaging and conference calls at a nominal fee
10. Procure calling card for member at a nominal fee. The member is billed for card use by the phone company.
11. Copying services at a per page fee for self service, staff assisted or laser copies
12. Faxing services at a per page fee which includes sending and receiving
13. Voice mail options:
  - a. Passive voice mailbox included in the membership fee
  - b. Active notification at a monthly fee
  - c. Variable active notification at a monthly fee
  - d. Additional passive mailbox at a monthly fee
  - e. Extended message length and capacity at a monthly fee
  - f. Custom operator at a monthly fee
14. Mailbox options:
  - a. Standard is included in the monthly membership fee.
  - b. Large or storage size at an additional monthly fee
  - c. Additional company names at a monthly fee
  - d. Mailbox check for a nominal fee
15. Mail services:
  - a. Metered mail charges as postage plus a nominal transaction fee
  - b. Courier shipping charges for the carrier plus a nominal fee
  - c. Forwarding charges for a nominal fee plus postage
16. Miscellaneous services:
  - a. Coffee service for meetings for a nominal fee per pot of coffee per meeting
  - b. Notary services for a nominal fee per signature

### **Applicable Law**

Section 1101(b)(4)(i) of the Tax Law defines the term "retail sale" as:

A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or

(B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. . . .

Section 1101(b)(13) of the Tax Law defines the term "telephone answering service" as:

A service that consists of taking messages by telephone and transmitting such messages to the purchaser of the service or at the purchaser's direction, but not including such service if it is merely an incidental element of a different or other service purchased by the customer.

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax – . . . there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

(b)(1) The receipts from every sale, other than sales for resale, of the following:(A) gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature; (B) telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service; (C) a telephone answering service; and (D) a prepaid telephone calling service.

\* \* \*

(c) The receipts from every retail sale, except for resale, of the following services:

\* \* \*

(2) Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which services are performed.

\* \* \*

(4) Storing all tangible personal property not held for sale in the regular course of business and the rental of safe deposit boxes or similar space.

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this article, but excluding (i) services rendered by an individual who is not in a regular trade or business offering his services to the public. . . .

\* \* \*

(d)(i) The receipts from every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers (except those receipts taxed pursuant to subdivision (f) of this section):

(1) in all instances where the sale is for consumption on the premises where sold;

(2) in those instances where the vendor or any person whose services are arranged for by the vendor, after the delivery of the food or drink by or on behalf of the vendor for consumption off the premises of the vendor, serves or assists in serving, cooks, heats or provides other services with respect to the food or drink . . . .

### **Opinion**

Petitioner's client, Corporation X, will charge small businesses membership fees for the use of office space and equipment and the provision of general clerical and office services. Corporation X will offer several membership plans, with a median monthly membership fee of \$200. These membership plans entitle a member to most, or all, of the items enumerated in A through J above, depending on the membership plan. The membership fee is higher for plans that offer more services. Corporation X will charge businesses separately on an hourly basis for the rental of offices and conference rooms. Based on these facts, Corporation X's monthly membership fee is considered to be primarily a charge for services and the use of office equipment.

The monthly membership fee includes both taxable and nontaxable items. The locked mailbox service is a taxable storage service under Section 1105(c)(4) of the Tax Law, and the dedicated phone lines, voice mailbox, live answer tele-secretarial services and high speed DSL are taxable services under Section 1105(b) of the Tax Law. The provision of photocopy and fax

machines is a rental of tangible personal property taxable under Section 1105(a) of the Tax Law. The professional address service, secretarial and receptionist services, and the use of conference rooms are generally not taxable. Where taxable and nontaxable services are provided to a purchaser as part of a single receipt, sales tax must be collected on the entire charge, unless the charges for the various taxable services are separately stated and for a reasonable amount and such services may be purchased separately from the nontaxable services. See Richard W. Genetelli, C.P.A., Adv Op Comm T & F, March 6, 1997, TSB-A-97(11)S. Since the monthly membership fee in this case does not break out the charges for taxable and nontaxable sales, the entire amount of such fee is subject to sales tax.

The determinations as to the taxability of the "A La Carte" services follow:

<b>Taxability of "A La Carte" Services</b>		
<b>Service being provided</b>	<b>Taxable</b>	<b>Exempt</b>
1. Small conference room at an hourly fee.		X
2. Standard office at an hourly fee.		X
3. After hours access at an hourly fee.		X
4. 800 number at a monthly fee.	Sec. 1105(b)	
5. Additional long distant account at a monthly fee.	Sec. 1105(b)	
6. Bell Atlantic directory listing at a monthly fee.	Sec. 1105(b)	
7. Long distance calls which will be billed to each member at 12½ cents per minute.	Sec. 1105(b)*	
8. Live answer tele-secretarial services for over calls (over 200 per month limit as per above) at a nominal fee per call.	Sec. 1105(b)**	
9. Handle third party messaging and conference calls at a nominal fee.	Sec. 1105(b)**	
10. Procure calling card for member at a nominal fee plus fixed rate per minute.	Sec. 1105(b)*	
11. Copying services at a per page fee for self service, staff assisted or laser copies.	Sec. 1105(a) or Sec. 1105(c)(2)***	

<b>Taxability of "A La Carte" Services</b>		
<b>Service being provided</b>	<b>Taxable</b>	<b>Exempt</b>
12. Faxing services at a per page fee which includes sending and receiving.	Sec. 1105(b)*	
13. Voice mail options:	Sec. 1105(b)	
a. Passive voice mailbox included in the membership fee.	Sec.1105(b)	
b. Active notification at a monthly fee.	"	
c. Variable active notification at a monthly fee.	"	
d. Additional passive mailbox at a monthly fee.	"	
e. Extended message length and capacity at a monthly fee.	"	
f. Custom operator at a monthly fee.	"	
14. Mailbox options:	Sec. 1105(c)(4)	
a. Standard is included in the monthly membership fee.	"	
b. Large or storage size at an additional monthly fee.	"	
c. Additional company names at a monthly fee.	"	
d. Mailbox check for a nominal fee.		X
15. Mail services:		
a. Metered mail charges as postage plus a nominal transaction fee.		X
b. Courier shipping charges for the carrier plus a nominal fee.		X
c. Forwarding charges for a nominal monthly fee plus postage.		X
16. Miscellaneous services:	Sec. 1105(d)	
a. Coffee service for meetings for a nominal fee per pot of coffee per meeting.		
b. Notary services for a nominal fee per signature.		X

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- \* Separate charges for interstate and international telephone calls and fax service are exempt from sales tax. However, intrastate long distance telephone calls and intrastate fax service are subject to the sales tax imposed under Section 1105(b) of the Tax Law.
- \*\* Retrieving and forwarding messages is taxable as a telephone answering service under Section 1105(b)(1)(C) of the Tax Law. The service of setting up conference calls may not be subject to tax in some cases. See Frontier Confer Tech, Inc., Adv Op Comm T&F, May 21, 1999, TSB-A-99(30)S.
- \*\*\* Where Corporation X provides the photocopy machine and paper supplies, Corporation X is selling tangible personal property (i.e., the copies) subject to tax under Section 1105(a) of the Tax Law. Where the member furnishes the paper supplies, Corporation X is providing a service taxable under Section 1105(c)(2) of the Tax Law.

When Corporation X provides taxable and nontaxable A La Carte services to a member, sales tax must be collected on the entire charge, unless the charges for the taxable services are separately stated and for a reasonable amount and such services may be purchased separately from the nontaxable services. See Richard W. Genetelli, C.P.A., *supra*.

DATED: March 3, 2003

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