

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

TSB-A-91 (14)S
Sales Tax
January 23, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S901003B

On October 3, 1990, a Petition for Advisory Opinion was received from CCB Management of Texas, Inc., PO Box 388, Burnt Hills, New York 12077.

The issue raised by Petitioner, CCB Management of Texas, Inc., is whether a minimum charge for credit information which is not an annual fee and does not entitle the subscriber to free reports or reduced charges is subject to New York State and local sales and use taxes pursuant to Section 1105(c)(1) of the Tax Law where there is:

1. A minimum charge of the full amount when no reports of any kind are issued.
2. A minimum charge in a month when only oral reports are issued.
3. A minimum charge in a month when only written reports are issued.
4. A minimum charge in a month when both written and oral reports are issued.

Petitioner is in the business of providing credit information services to its subscribers regarding their customers. In an effort to discourage the use of services in very small amounts, Petitioner has imposed a monthly minimum charge on subscribers. Petitioner has an established fee schedule for both oral credit reports and for written credit reports and subscribers are charged according to that schedule. However, if a subscriber orders less than \$30.00 per month of credit reports, a minimum charge in the difference between the amount charged for reports actually ordered and \$30.00 is charged to the customer's account.

Section 1105(c)(1) of the Tax Law imposes tax upon:

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.

Section 1105(c)(9) of the Tax Law, effective September 1, 1990, imposes tax upon:

The furnishing or provision of an entertainment service or of an information service, 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.

Section 527.3(a) of the Sales and Use Tax Regulations provides:

* * *

(4) Charges for credit information services, other than those that are transmitted orally are subject to tax. The following rules shall apply in determining taxability of services that include both oral and written reports:

(i) Any fee for a written report is taxable.

(ii) Any fee for an oral report is taxable if the oral report is preliminary to the written report.

(iii) An annual fee for subscribing to a service is taxable if it entitles the subscriber to a certain number of free reports, or to reduced charges on reports, unless the subscriber is entitled only to oral reports.

This regulation as it pertains to oral reports, only applies to such reports issued prior to September 1, 1990.

Department of Taxation and Finance Notice, N-90-44, pertaining to the taxability of entertainment and information services provided by means of telephony or telegraphy, states, in part, as follows:

Effective September 1, 1990, any charge for entertainment services or certain information services which are furnished, provided or delivered by means of telephony or telegraphy or telephone or telegraph service will be subject to the combined state and local sales tax. The combined state and local sales and use tax rate to be used will be the rate in effect in the jurisdiction where the service is received.

The term telephony or telegraphy or telephone or telegraph service is used in the broadest sense and includes, without limitation, the transmission, conveyance, routing or reception of messages, information or data by electric or similar means by wire, cable, fiber optics, microwave, radio, satellite or similar facilities.

Entertainment and information services provided or delivered by means of telephony or telegraphy or telephone or telegraph service include all such services delivered by such means. These services are taxable whether provided through 500, 700, 800 or 900 telephone numbers as well as those delivered by private telephone line, cable or channel.

Among the services that are subject to tax as entertainment services are those of an interactive nature such as theme conversation opportunities: e.g., dating opportunities, adult conversation opportunities and celebrity call-in lines. In addition, conversation or gab lines/party lines are also included. Prerecorded entertainment (celebrity messages, jokes, music, readings, horoscopes, etc.) and contests, call-in polls and games are also examples of the taxable service.

Collecting, compiling or analyzing information of any kind and reporting such information to other persons by means of telephony or telegraphy or telephone or telegraph service constitutes the rendering of an information service subject to tax.

Information services that are currently subject to tax when furnished in written form by printed, mimeographed or multigraphed matter or by duplicating written or printed matter continue to be subject to tax.

Among the services that are subject to tax as information services are credit reports, tax or stock market advisory and analysis reports, stock quotes, product and marketing surveys and sports highlight lines.

Sales tax applies to all charges for the service by the vendor to the customer.

A fee for subscribing to a taxable entertainment or information service that is billed on a monthly, annual or other basis is taxable. Membership or other fees entitling the subscriber to receive, by means of telephony or telegraphy, a certain number of free reports or services, or reduced charges on reports or services are also taxable. No tax is due where the vendor makes no charge for the services. (emphasis added)

Accordingly, since Petitioner is providing a service taxable under Section 1105(c)(1) of the Tax Law, therefore pursuant to said Section and to Section 527.3(a)(4) of the Sales and Use Tax Regulations a monthly minimum charge assessed by Petitioner which entitles its customers to receive either written credit reports or written and oral credit reports, regardless of whether any reports are actually issued, is subject to State and local sales and use tax. In addition, since

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the Petitioner is providing a service taxable under Section 1105(c)(9) of the Tax Law and Notice N-90-44, effective September 1, 1990, a monthly minimum charge assessed by Petitioner which entitles its customers to receive oral reports only is also subject to State and local sales and use taxes.

DATED: January 23, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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