

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

TSB-A-92 (31)S
Sales Tax
April 2, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911223A

On December 23, 1991, a Petition for Advisory Opinion was received from Hodgson, Russ, Andrews, Woods and Goodyear, 1800 One M & T Plaza, Buffalo, New York 14203.

The issue raised by Petitioner, Hodgson, Russ, Andrews, Wood and Goodyear, is whether Petitioner's clients consulting services provided by telephone are subject to sales tax.

Petitioner's client is registered as an investment advisor with the Securities and Exchange Commission. Petitioner's client engages in consulting and investment advisory services, investment research and the publication of financial newsletters targeted to an audience of high-level, technically sophisticated financial management decision-makers.

Petitioner's clients newsletters provide subscribers with almost instantaneous access to news and analysis regarding particular financial markets. One focuses on news developments in the corporate securities markets. A second is devoted to news of domestic money and capital markets. Another focuses on fixed income, cash and future markets.

Newsletters received by subscribers in printed form would qualify as an exempt periodical. However, most of Petitioner's clients subscribers receive their newsletters as part of the Petitioner's clients electronic news service.

Individual subscribers, based on their particular circumstances, may feel the need to go beyond the information provided in these newsletters to explore one or more specific concerns in greater depth. Under these circumstances, subscribers can take advantage of Petitioner's clients telephone consulting services. Some subscribers call regularly; others less frequently. In total, Petitioner's clients staff spends approximately 35 hours per week providing consulting services over the telephone. When subscribers call, they have access to the authors of the newsletter to which they subscribe, highly skilled professionals in the field of financial market analysis.

Subscribers do not call these consultants to get the final closing price of a stock, or the current movement of the yen versus the dollar. Subscribers are high level financial managers which have ready access elsewhere to such information. Neither do subscribers call for the information provided in the taxpayer's newsletter. All consulting subscribers are also newsletter customers, and have access to such information. Instead, subscribers call with highly individualized concerns based on their own particular circumstances and interests.

Consulting services can be purchased separately from newsletter subscriptions. However, this is an exception, and not the rule. Generally, subscribers purchase the consulting service as a package that also includes a subscription to one of Petitioner's clients financial newsletters. Charges for the consulting service is, however, separately stated from the charges for the newsletters on the subscriber's invoice.

Section 1105(c) of the Tax Law imposes sales tax, in part, on 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.

(9) The furnishing or provision of an entertainment service or of an information service, which is furnished, provided, or delivered by means of telephone 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, in part, as follows:

(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.

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(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.

In Mark S. Klein, Adv Op Comm T&F, July 29, 1991, TSB-A-91(53)S, the Commissioner advised that an on-line news service delivered to customers by means of an electronic readout or display rather than in printed or written form did not fall within the exemption under Section 1115(a)(5) of the Tax Law for newspapers and periodicals, but rather the receipts from the sale of the on-line news service were subject to tax as an information service under Section 1105(c)(1) of the Tax Law.

In Morton L. Coren, P.C., Adv Op Comm T&F, June 29, 1990, TSB-A-90(33)S, the Commissioner advised that even though the components of a particular sale could be separately stated, calculated or estimated, that if such components could not be separately purchased the combination of items listed must be considered as one and subject to sales tax as a single purchase.

Accordingly, Petitioner's clients consulting service is not an information service pursuant to Sections 1105(c)(1) and 1105(c)(9) of the Tax Law and Section 527.3(a)(4) of the Sales and Use Tax Regulations since the information is provided orally, is personal and individual in nature, and is not incorporated in reports furnished to subscribers. Moreover, while Petitioner's clients electronic news service is an information service pursuant to Mark S. Klein, supra, Petitioner's clients consulting service can be purchased separately from the electronic news service and is separately stated on invoices given to subscribers. Therefore, pursuant to Morton L. Coren, P.C., supra, even if the consulting service is purchased as a package with the newsletters, the separately stated charge for the consulting service is not subject to sales tax.

DATED: April 2, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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