

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

TSB-A-93 (42)S  
Sales Tax  
July 13, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930401C

On April 1, 1993 a Petition for Advisory Opinion was received from Planetarium Travels, Inc., 108 W. 81st St., New York, New York 10024.

The issue raised by Petitioner, Planetarium Travels, Inc., is whether an item invoiced to Petitioner as "recurring credits" is subject to sales tax.

Petitioner is engaged in the business of operating a travel agency in New York City. In order to operate in the most efficient manner the Petitioner subscribes to a computer reservations system, operated by American Airlines, Inc., (hereinafter American) through its SABRE Travel Information Network division. SABRE allows a travel agency to sell tickets on a wide variety of airlines, cruise ships and railroads and make reservations for hotel accommodations and rental cars around the world. The Petitioner and American have entered into a written contract to supply a number of goods and services, collectively referred to herein as SABRE, upon which State and local sales tax is collected and remitted on a monthly basis.

The contract, in part, provides for a \$36,600 discount of the sales price of the SABRE to which the Petitioner subscribes. The discount is divided into sixty equal monthly "recurring credits" of \$610 each which are applied to the monthly invoice. American has collected and remitted sales tax upon an invoice base which does not include the "recurring credits." Petitioner has paid in full all invoices, including sales tax, from American for the SABRE package of goods and services.

Petitioner's contract with American described the credits' arrangement as follows:

American agrees to provide Customer a fixed monthly credit to such total Monthly Charges if customer meets all the terms and conditions of this agreement including without limitation processing SABRE Bookings equal to the amount of the Fixed Monthly Credit Booking Level shown above.

For the purposes of this Schedule A, SABRE Bookings means the number of airline, hotel, or rental car segments (which obligates a participant to pay a booking fee to American) created in or processed through SABRE by Customer per video agent set during any one calendar month. For purposes of this Schedule A, participant means an air carrier, hotel or rental car company which has an agreement with American for the sale of its products or services through SABRE. (Emphasis supplied)

Section 1101(b)(3) of the Tax Law defines receipt as:

The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts, and also including any charges by the vendor to the purchaser for shipping or delivery regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery is provided by such vendor or a third party, but excluding any credit for tangible personal property accepted in part payment and intended for resale. (Emphasis supplied)

Petitioner's contract with American specifically provides that Petitioner is not eligible for a credit unless "SABRE Bookings equal ... the amount of Fixed Monthly Credit Booking level shown above .... For the purpose of the Schedule A, SABRE Bookings means the number of airline, hotel or rental care segments (which obligates a participant to pay a booking fee to American)"

Accordingly, Petitioner is not receiving a true discount or a credit but is actually having a third party pay a part of its obligation to American on its behalf. Consequently, in accordance with Section 1101(b)(3) of the Tax Law the amount of credit which Petitioner receives from American is not deductible when computing the sales tax.

DATED: July 13, 1993

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

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