

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

TSB-M-90 (10) S
Sales Tax
October 10, 1990

TAXABILITY OF ENTERTAINMENT AND INFORMATION SERVICES PROVIDED BY
MEANS OF TELEPHONY OR TELEGRAPHY

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 tax rate to be used is 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.

Entertainment Services

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.

Information Services

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.

Generally, collecting, compiling or analyzing information of any kind and reporting this 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. However, there are certain instances whereby the provision of such services would not be subject to tax. (See Exceptions to the 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 sport highlight lines.

General

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 to reduced charges on reports or services are also taxable. No tax is due where the vendor makes no charge for the services.

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

Whether or not tax is due on charges for such services is determined by the point of delivery to the recipient, not the location of the provider. When entertainment or information services are delivered to a recipient located in New York State, the combined state and local sales tax is to be charged at the rate in effect for the locality where the service is delivered. Tax is to be separately stated on the recipient's telephone bill, credit card charge receipt or on any other bill issued for such services.

Example 1: A New York State resident makes a long distance call via a 900 number to a telephone entertainment service located in California. The New York State resident, who placed the call from home, is charged \$.95 per minute for the call, and the charge appears on the customer's telephone bill. The charge to the New York State resident for the entertainment service is subject to the New York State sales tax because it is for an entertainment service delivered in New York State over the telephone. This is true even though the entertainment service provider is located outside New York State.

Exceptions to the Tax

The sales tax does not apply to receipts from the sale of information services that would be exempt if furnished in written form by printed, mimeographed or multigraphed matter or by duplicating written or printed matter such as by tapes, discs, electronic readouts or displays (See Tax Law section 1105(c)(1)).

Thus, an information service which is personal or individual in nature and is not or may not be substantially incorporated into reports furnished to other persons by the person who collected, compiled or analyzed the information is not subject to tax. Examples of such services include a personalized management report delivered orally over the telephone, or an insurance damage appraisal conveyed over the telephone.

Purchases of information services by newspapers and/or radio and television broadcasters that are used in the collection and dissemination of news are also exempt. Purchases of entertainment services used in the collection and dissemination of news are not exempt.

The sales tax on entertainment and information services provided by means of telephony or telegraphy does not apply to charges made to organizations and entities that are exempt from the general sales and use tax in accordance with section 1116(a) of the Tax Law. Such entities are:

- New York State or any of its agencies, instrumentalities, public corporations or political subdivisions;
- The United States of America, and any of its agencies and instrumentalities;
- The United Nations or any international organization of which the United States of America is a member;
- Any organization established and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition or for the prevention of cruelty to children or animals;
- A post or organization of past or present members of the armed forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization;
- The following Indian nations or tribes residing in New York State: Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shinnecock, Tonawanda and Tuscarora;
- A not-for-profit corporation acting as a health maintenance organization subject to the provisions of Article 44 of the public health law; and
- Cooperative and foreign corporations doing business in New York State pursuant to the rural electric cooperative law.

When exempt entertainment services or exempt information services are being billed by a person other than the actual exempt provide of the services, the actual provider must give an exempt certification document Form ST-930, Certification of Nontaxable Services Provided Via Telephony or Telegraphy or Telephone or Telegraph Service, to the person who will be doing the billing in order that sales tax will not be charged on the exempt services.

This sales tax exemption document cannot be issued unless the person issuing the document is registered to collect sales tax or is specifically exempt under Section 1116(a) of the Tax Law (and, if required, issued an Exempt Organization Certificate, Form ST-119).

Registration

All vendors of entertainment services or information services furnished, provided or delivered by means of telephony or telegraphy or telephone or telegraph service who are not already registered to collect sales tax must file a DTF-17, Certificate of Registration with the Tax Department and have a valid DTF-17A, Certificate of Authority at the time the service is provided or the sales tax exemption document issued. To request a Certificate of Registration, call toll free (from New York State only) 1 800 4628100. From areas outside New York State, call (518) 438-1073. If you need to write, address your letter to: New York State Tax Department, Taxpayer Assistance Bureau, W. A. Harriman Campus Albany, New York 12227.

Vendors

When any person, affiliate or agent other than the actual provider of entertainment or information services bills the recipient of the services on behalf of the provider, that person will be deemed to be a vendor of the services for sales tax purposes and will be liable for all the obligations of a vendor. Such obligations include collecting, reporting and remitting the sales tax due on entertainment and information services which are furnished, provided or delivered by means of telephony or telegraphy or telephone or telegraph service.

A person deemed a vendor of such services is entitled to and possesses all the rights afforded a vendor, including the right to an exclusion or a credit or refund of tax as provided in section 1132(c) of the New York State Tax Law, with respect to such services.

The person providing the billing service, whether doing the actual billing or having the billing done by an affiliate or agent, will be deemed to be a vendor of entertainment or information services

when the charges for the services are either listed as part of, or as a schedule to the statement of such person to its customers, or are separately billed.

The term "affiliate" means an entity which

- (1) directly, indirectly or constructively controls a person deemed a vendor of entertainment and/or information services;
- (2) is controlled by a person deemed a vendor of entertainment and/or information services; or
- (3) is controlled by a common parent who also controls a person deemed a vendor of entertainment and/or information services.

Example 2: Marsando Corporation is an actual provider of a taxable information service being delivered, by means of telephony, to customers located in New York State.

Marsando Corporation does not directly bill its customers for the information service. It has contracted with Coast-to-Coast Telephone Corporation, a telephone company that provides long distance telephone service, to bill the customers for the information services being provided.

In turn, Coast-to-Coast Telephone Corporation has its wholly-owned subsidiary, East Coast Telephone Corporation, which provides local telephone service, include the charges for Marsando Corporation's information services, along with other long-distance calls, in East Coast Telephone Corporation's bill to its customer for local telephone service.

Marsando Corporation, as the actual provider of a taxable information service which is delivered via telephony to a recipient in New York State, is a vendor for New York State sales tax purposes.

Coast-to-Coast Telephone Corporation, who has contracted with Marsando Corporation to bill the information service recipient on behalf of Marsando Corporation, is deemed to be a vendor of information services for sales tax purposes.

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East Coast Telephone Corporation is also deemed to be a vendor of information services for sales tax purposes, since it receives monies representing payment of sales taxes.

The designation of a person as a vendor, by virtue of such person performing the billing of charges on behalf of the actual provider of entertainment or information services, in no way limits the obligations or removes the liabilities of the actual provider of such services or any other person with respect to the sales tax imposed on these services.