

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

TSB-A-81(59)S
Sales Tax
November 27, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810803A

On August 3, 1981 a Petition for Advisory Opinion was received from the Arbitron Company, 1350 Avenue of the Americas (Suite 1105), New York, New York 10019.

The issue raised is whether the preparation by Petitioner of customized audience estimates for individual subscribers is a taxable information service under section 1105(c)(1) of the Tax Law.

Petitioner is a specialized survey research company. Broadcasters, advertisers, and others contract with Petitioner to develop estimates of radio listening and television viewing audiences. Some of the audience estimates and data which Petitioner develops are contained in standardized syndicated printer reports. New York sales taxes have been collected on these syndicated reports for many years and Petitioner is not contesting the taxability of such syndicated reports. However, in addition to providing subscribers with syndicated market reports, Petitioner also develops customized, individualized audience estimates in response to the specific needs of particular subscribers.

Petitioner's first step in developing its syndicated audience estimates service and many of its non-syndicated services is the selection of an appropriate sample of potential radio listening and television viewing audiences. In selecting this sample, Petitioner applies professional survey research methodology which it has developed over many years and is in the continuous process of revision. Each person selected as a sample member is telephoned by a representative of Petitioner and asked to participate in an audience survey. Each person or household consenting is mailed a week-long diary in which to record his or her television viewing or radio listening for the survey week. Completed diaries are mailed to Petitioner for analysis.

The first step in the analysis of the survey diaries is the transfer of the information contained in the diaries into a computerized raw data base. Many times the diary entries are unclear or suspect for some reason. In some cases, Petitioner telephones the participant to review the diary entries. Based on this further contact and/or other specialized research procedures, Petitioner's staff makes judgments as to the reliability and usability of the information.

By performing a series of complex calculations, using the raw data base, Petitioner may project audience estimates. Estimates may be made not only of the size of the total audience represented by the sample but also of the size of subgroups of the total audience, based on such factors as age, race and sex.

Petitioner performs a certain series of calculations upon the data base to obtain the estimates included in its syndicated reports. These estimates are intended to satisfy the general informational needs of Petitioner's subscribers.

Individual subscribers sometimes request Petitioner to furnish different audience estimates than those contained in the syndicated reports. These estimates pertain to subgroups of the total audience different from the subgroups treated in the estimates contained in the syndicated reports. For example, a subscriber may request an audience estimate with respect to a geographic area or an age group not covered in the syndicated reports. In many instances Petitioner furnishes these individualized audience estimates by using the same raw data base it uses to prepare the syndicated reports. Petitioner merely applies a different analytic procedure to the same raw data base to project the audience estimates requested by a subscriber. The estimates will then be furnished to the subscriber making the request.

In some cases, Petitioner does not use the raw data base used in preparing the syndicated reports to prepare a customized report for an individual subscriber. Petitioner may gather data from a different audience sample; or may ask different questions of the audience sample used in connection with the syndicated reports in order to obtain a new data base. The data compiled by Petitioner in these instances are used solely in connection with a particular subscriber's information request. Such data is not used in preparing reports for other subscribers.

Petitioner contends that its customized non-syndicated reports are analogous to the type of reports which were determined to be exempt in a recent decision of the Appellate Division (New York Life Insurance Co. v. State Tax Commission, 80 AD 2d 675) and reasons, accordingly, that its non-syndicated reports are also exempt from sales and use tax.

Section 1105(c)(1) of the Tax Law imposes a tax on the following service:

"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."

Customized reports furnished by Petitioner which are developed from the raw data used in preparing the syndicated reports are subject to sales tax. Petitioner's reliance on the New York Life Insurance Co. decision is misplaced. Unlike the facts in that case, Petitioner in many instances uses the raw data obtained for the syndicated reports to develop other customized, non-syndicated reports for its customers. Except as discussed below, both types of reports reflect the

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data obtained through the audience survey diaries. It is only the degree of generalization or refinement which distinguishes the syndicated and non-syndicated reports. On one hand, the generalized syndicated reports reflect the information in the customized non-syndicated reports and on the other hand, the non-syndicated report data is a component of the syndicated reports. Thus, except as noted below, these non-syndicated reports are not "personal or individual in nature" because the information therein is or may be substantially incorporated in reports furnished by Petitioner to other persons within the meaning and intent of section 1105(c)(1) of the Tax Law.

Accordingly, in furnishing customized non-syndicated reports developed from the raw data used in preparing the syndicated reports, Petitioner is providing a taxable information service pursuant to section 1105(c)(1) of the Tax Law.

However, a customized non-syndicated report based on data gathered for use solely in connection with that particular report is not subject to sales tax provided such report (or a substantial portion of the information therein) prepared for one subscriber may not be duplicated or incorporated into a report for a second subscriber who requests similar information. In every instance where this type of customized non-syndicated report is furnished, Petitioner conducts a separate audience survey and prepares a separate report.

Accordingly, provided such information furnished to one subscriber may not be incorporated in reports provided by Petitioner to other subscribers, this type of service is a personal or individual information service within the meaning of section 1105(c)(1) of the Tax Law and, as such, is not subject to sales and use tax.

DATED: November 12, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau