

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

TSB-A-86(17)S  
Sales Tax  
May 5, 1986

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S851217A

On December 18, 1985 a petition for Advisory Opinion was received from Coinven Inc., 9 Brightside Avenue, East Northport, N.Y. 11731-1903.

Petitioner purchases telephones and installs them in various establishments such as restaurants and bars. Petitioner purchases telephone services from the New York Telephone Co. and charges its customers 25¢ per call. New York Telephone Co. bills Petitioner for each telephone in service. The bill includes line charges, unit charges, etc. and the sales tax applicable for the location of each telephone.

As a separate transaction, Coinven pays a commission to the owner of each establishment where a telephone is located.

The issues are (1) whether Petitioner may purchase for resale telephone services provided by New York Telephone Co.; (2) who is responsible for collection of the sales tax on the sale of telephone services to Petitioner's customers; and (3) are the commissions paid by Petitioner to the owners of the establishments where the telephones are located subject to tax.

Section 1105(b) of the Tax Law imposes a tax on "The receipts from every sale,... other than sales for resale, of telephony and telegraphy and telephone and telegraph service..." Section 1101(b)(3) defines receipts as: "The sale price of any property and the charge for any service taxable under this article . . . without any deduction for expenses..."

Accordingly, Petitioner's purchases of telephone services from New York Telephone Co. are purchases for resale and may be made without payment of the sales tax. To avail itself of this exclusion, Petitioner must furnish to New York Telephone Co. a properly completed resale certificate (Form ST-120).

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Petitioner's charges to its customers for telephone services are subject to tax in their entirety, with no deduction for the commissions paid to the establishments where the telephones are located. Petitioner is required to collect and remit sales tax on all such charges. However, the commissions paid by Petitioner to the establishments for the privilege of placing its telephones on their premises are not subject to sales and use tax under Articles 28 and 29 of the Tax Law.

DATED: May 5, 1986

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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