

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

TSB-A-88 (58)S
Sales Tax
November 16, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880826B

On August 26, 1988, a Petition for Advisory Opinion was received from Corsearch Inc, 19 West 21st St., Suite 302, New York, New York 10010.

The issue raised is whether the services performed by Petitioner are subject to the sales tax imposed under section 1105(c)(1) of the Tax Law.

Petitioner is an information brokerage firm which receives the rights to hundreds of computerized databases. Petitioner searches these data bases on a project-by-project basis for its clients. Some of Petitioner's clients maintain the same type of system that they use for preliminary screening of information prior to ordering complete research reports from a vendor such as Petitioner. Examples of some of Petitioner's projects include searches of potential trademark infringements and Westlaw and Lexis searches for litigators.

On July 1, 1988 Petitioner received a letter from Mr. William Myers, Chief, Sales Tax Instructions and Interpretations Unit of the Department of Taxation and Finance, stating that Petitioner's services are subject to sales tax. Petitioner does not agree with the conclusions reached in Mr. Myer's letter and seeks review of said letter.

In its Petition, Petitioner argues that its services are professional in nature and similar to those offered by an attorney and that if its services were performed by an attorney, they would be exempt from sales and use tax.

Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of: "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.

The collecting, compiling or analyzing of information of any kind or nature and the furnishing of reports thereof to other persons constitutes the rendering of an information service. 20 NYCRR 527.3(a)(2). The reports furnished by Petitioner consist of information which has been collected, compiled or analyzed. Therefore, the sale of these reports constitutes the rendering of an information service within the meaning of the statutory provision set forth above.

The first of the two criteria which must be met to exclude Petitioner's reports from taxation is that the information supplied must be "personal or individual" in nature.

In the Matter of New York Life Insurance Co. v. State Tax Commission, 80 AD

2d 675, aff'd no op 55 NY 2d 760, confidential character reports prepared by licensed detective agencies were deemed to be personal or individual in nature by virtue of the fact that the interview phase of the investigations, the primary basis of the report, was tailored in each instance to the specifications of the client. However, in the Matter of Twin Coast Newspapers, Inc., v. State Tax Commission, 101 AD 2d 977, the Court held that information is not personal or individual in nature merely because it is compiled for a specific person. The information must be of the uniquely personal nature contemplated by the statute in order to come within the purview of the exclusion. Thus, information which has been published elsewhere and which is merely compiled to the specifications of a particular person is not personal or individual in nature.

The requirement that the information furnished be of a uniquely personal nature also formed the basis for the determination of the State Tax Commission in the Matter of Towne-Oller & Associates, Inc., TSB-H-85(36)S; aff'd. 120 A.D.2d 873, 502 NYS2d 544(1986). In that instance, Towne-Oller provided information reports to manufacturers of health and beauty aids. The information provided by Towne-Oller was used by its customers to determine whether the manufacturers' products were in stock in the appropriate distribution outlets. The Tax Commission, citing Twin Coast, concluded that the fact that some of the reports were prepared to a customer's specifications did not in and of itself, render the reports personal or individual in nature and held further that the information provided by Towne-Oller was not of the uniquely personal nature contemplated by the Tax Law SII05(c)(1).

Additionally, in Allstate Insurance Company v. Tax Commission of the State of New York, 115 A.D.2d 831 (1985), Department of Motor Vehicle reports (MVR's) were held to not qualify as personal and individual in nature. The court held that "[t]his exclusion (Tax Law SII05(c)(1)) refers to uniquely personal information and does not apply to information filed with a governmental agency as a public record to which there is unlimited public access" (citations omitted).

The second criterion of the exclusionary portion of the statute is that the information "is not or may not be substantially incorporated in reports furnished to other persons."

Sales tax regulation section 527.3(a)(3) provides the following example:

Example 4: A computer service company owns a service program consisting of analyses of law cases and statutes. It is asked by a customer to research all references to the word "assessment". The fee for the printout received by the customer constitutes a taxable receipt from an information service, as the citations listed may be given to another subscriber requesting the same information.

As stated in Mr. Myers' letter of July 1, 1988, "[i]nformation reports prepared from a common data base fail to meet the requirement for exclusion from sales tax since the information from which the report is compiled is readily available for incorporation into reports sold to subsequent customers."

Accordingly, since Petitioner's services consist of information which is not personal or individual in nature and which is or may be substantially incorporated in reports furnished to others, Petitioner's services are subject to the tax imposed under §1105(c)(1) of the Tax Law,

Finally, while professional services rendered by a licensed attorney have always been deemed to be outside of the scope of the sales and use tax, it is noted that Petitioner's services are not professional services rendered by a licensed attorney notwithstanding Petitioner's position regarding the professional nature of its services.

DATED: November 16, 1988

FRANK J. PUCCIA
Director
Technical Services

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