

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

TSB-A-89(17)S
Sales Tax
July 17, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S881019A

On October 19, 1988, a Petition for Advisory Opinion was received from Peat, Marwick Main & Co., 345 Park Avenue, New York, New York 10154.

The issue raised is whether Petitioner's client's service is subject to sales tax under section 1105(b) or section 1105(c)(1) of the Tax Law.

The following is a description of their client's services, which has been provided by the Petitioner.

Management Company is headquartered in California and has offices in New York as well as other cities in the U.S. It provides comprehensive telecommunications management service to various business entities and a variety of specialized information and consulting services. Clients are directly connected or "hard wired" to local telephone switches. Services offered include but are not limited to the following:

- 1) Telecommunications Management - Within the local access and transport area (LATA), Management Company selects for its clients, a variety of transmission services, including T-1, FX, WATS, and Direct Distance Dialing ("DDD") lines and provides to the local telephone company routing programs for clients' telecommunication traffic. For inter-LATA traffic (long distance), Management Company selects the carriers, services and facilities best suited to its clients' needs, arranges for those services and facilities to be connected to the local telephone company switch, and for traffic to be routed to the optimal available service.
- 2) Detailed Usage Reports - Management Company provides comprehensive monthly management reports to every client as part of its basic service. The reports list calls by telephone number in chronological order and provide a separate listing of all calls lasting more than 15 minutes or costing more than \$5.00. Multi-call reports are also provided that list all telephone numbers called more than 10 times during the billing period. Enhanced management reports may also be purchased to provide information needed to control telephone abuse, management costs and all patterns. In addition, clients may acquire all accounting reports which allow calls to be expensed to specific projects, clients or departments.
- 3) Additional Telemanagement Services - Management Company provides access to credit consultants and credit reports, information

professionals, and numerous business data bases, conference calling, and voice mail.

- 4) Enhanced Telemanagement Services - Management Company provides solutions to clients' telecommunications problems, such as coordination of telephone moves with company relocations, PBX installation and telemarketing training.

Services provided by local exchange and long distance telephone companies are billed to Management Company, including taxes, as the "customer of record" for its group of clients. This allows Management Company to receive bulk rates on behalf of the client group. The telephone company charges are passed through directly to the customer without mark-up. For managing these services Management Company charges the client a management fee. The management fee is calculated as a percentage of the pass-through charges on the bill. Management Company does not own any telecommunication transmission or switching devices.

The charges imposed by the telephone companies for services which are not managed by Management Company (i.e., taxes, line charges, surcharges, installation charges, etc.) are also passed through to the client without mark-up. A management fee is not applied to these charges.

In addition to the management fee, a monthly membership fee is charged to each customer at a flat rate. Both the management fee and monthly membership fee are separately stated on the customer's bill.

The following sections of the Tax Law and sales tax regulations are applicable to Petitioner's client.

Section 1105(b) of the Tax Law imposes a tax upon:

"The receipts from every sale, other than sales for resale, of gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature, and from every sale, other than sales for resale, of telephone and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service.

Section 1101(b)(3) of the Tax Law defines the term "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, but excluding any credit for tangible personal property accepted in part payment and intended for resale and excluding the cost of transportation of tangible personal property sold at retail

where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser. For special rules governing computation of receipts, see section eleven hundred eleven."

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

"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."

The amounts received by Management Company from its customers under the reimbursed costs, management fee, and "membership" fee arrangements constitute receipts from the sale of telephone services pursuant to section 1105(b) of the Tax Law and section 527.2 of the Sales and Use Tax Regulations and therefore all of such receipts, other than those derived from interstate or international telephone service, are subject to sales tax. Stouffer Management Food Service, Inc. v. Tully, 69 A.D.2d 1023, 414 NYS2d 948. The charges for detailed usage reports, additional telemanagement services and enhanced telemanagement services, although separately billed, are part of the telephone services provided by Management Company to its customers and are thus subject to sales tax pursuant to section 1105(b) of the Tax Law and section 527.2 of the Sales and Use Tax Regulations and are not information services taxable pursuant to section 1105(c)(1) of the Tax Law and section 527.3 of the Sales and Use Tax Regulations.

The telephone services purchased by the Management Company, other than those services purchased for its own use, from the local exchange and long distance telephone companies are purchased by it for resale to its customers and therefore such purchases are not subject to sales tax pursuant to section 1105(b) of the Tax Law.

DATED: July 17, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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