

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

TSB-A-93 (20)S  
Sales Tax  
March 22, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920611A

On June 11, 1992, a Petition for Advisory Opinion was received from First Call Corporation, 11 Farnsworth Street, Boston, MA 02210.

The issues raised by Petitioner, First Call Corporation, are:

1. Whether sales lead referral fees (hereinafter "premiums") paid to Petitioner by executing brokers used in Petitioner's computerized information directory are subject to sales tax.
2. Whether fees paid to Petitioner for the right to participate in Petitioner's computerized information directory are subject to sales tax.

Petitioner contacts institutional investment firms (hereinafter "customers") that would like to receive the information provided by Petitioner, but do not want to pay the required fees. In such instances, the customers are advised that the information service may be provided to them and the cost would be underwritten by a specific executing broker (hereinafter "broker"). In return it is expected that the customer will use such broker when making trades motivated by access to the information service. Because such arrangements are ultimately beneficial to the broker, in addition to paying the fees charged by Petitioner for its information services, they also pay a premium to Petitioner for each customer that is referred to them in this manner. Each charge is separately invoiced. Sales tax is only collected upon fees paid by the broker for receiver services provided to customers.

Petitioner is also an information provider for the delivery and retrieval of time-sensitive equity research, comments and opinions published by the top Wall Street brokerage firms (the "providers"). This product is referred to and mandated as "Morning Meeting Notes" (hereinafter "notes"). Petitioner provides portfolio managers, analysts and traders who work for institutional investment firms and other financial institutions (the "receivers") with instant access to notes. Notes are fully indexed and may be searched by as many as ten categories including company, industry and portfolio. Petitioner charges fees to both providers and receivers to participate in this information publishing service. Sales tax is collected upon fees charged to receivers only.

The messages of providers are solely communicated to Petitioner in Massachusetts via dedicated phone lines leased by Petitioner from various telecommunication companies. Such communication is made by means of a computer terminal or modem supplied to the providers by Petitioner. After provider information is received, Petitioner employees edit, index and validate the information. Thereafter, the notes are transmitted via various telecommunication vehicles leased by Petitioner to PC terminals at the premises of the receivers. Information sent to receivers may also be communicated via satellite, radio transmission or interstate telephone line leased by Petitioner or

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through alternative third party delivery systems. The PC terminals are supplied to the receivers by Petitioner for their delivery network only, not for third party delivery networks.

Petitioner will maintain the notes in the host database for access by receivers for ninety days, organized in accordance with the institution's request.

Petitioner's information publishing service allows providers to advertise their equity security research, morning meeting notes, and other equity information to receivers. The placement of this research creates a competitive advertising market for the purchase and sale of securities among the providers who place competing research. Much like a phone book, most providers assign a contact name and a phone number so the reader of the advertisement can follow-up with a phone call. The receiver obtaining this research is expected to do business with the provider responsible for it. Providers have the option to pick and choose the receivers who will have access to the information they make available to Petitioner.

Petitioner's information publishing service allows receivers to obtain timely information to properly manage their security portfolios and to obtain research recommendations from different sources on one terminal.

Concerning issue "1", Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services. The referral of customers to executing brokers is not one of the service enumerated under Section 1105(c) of the Tax Law. Therefore, the premium received by Petitioner from brokers for customer referrals is not subject to sales and use taxes, provided, however, that the premium paid by brokers is not an offset against the charges the brokers are required to pay to have the taxable information service furnished to their customers.

Regarding issue "2", Section 1105(c)(1) of the Tax Law imposes a tax on receipts from the sale of the service of the " ... furnishing of information by printed, mimeographed, or multigraphed matter ... but ... excluding the services of advertising ... "(emphasis added)

The listing and displaying of providers equity security research, morning meeting notes, and other equity information constitutes the placing of advertising. Accordingly, the charges by Petitioner to providers for listing and displaying their information is exempt from sales tax pursuant to Section 1105(c)(1) of the Tax Law.

It is noted, however, that the fee paid by receivers to receive the computerized information directory is subject to sales tax pursuant to Section 1105(c)(1) of the Tax Law as a charge paid to receive an information service.

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Moreover, where a provider of such information is also a receiver of such taxable information service, the charges for advertising must be separately stated from the charges for receiving the taxable information service and such services must be able to be purchased separately. Otherwise, the entire charge for such services is subject to sales tax.

DATED: March 22, 1993

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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