

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

TSB-A-95 (14)S
Sales Tax
May 8, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941227A

On December 27, 1994, a Petition for Advisory Opinion was received from Chex Systems, 1550 East 79th Street, Minneapolis, MN 55425.

The issue raised by Petitioner, Chex Systems, is whether Petitioner's account verification services are subject to New York State and local sales and use taxes.

Petitioner provides account verification services for financial institutions by compiling data from a network of financial institutions. Upon inquiry, Petitioner advises specific clients whether individual account applicants had prior checking accounts closed for cause such as nonsufficient funds. A member institution has the ability to make either an oral or on-line inquiry. At the time the inquiry is made, the requester makes a decision whether or not to open an account based on the information provided. Written documentation of the inquiry is not provided to the requester. The charges for these services are either a predetermined charge or a specific amount per inquiry.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.-- ... there is hereby imposed and there shall be paid a tax ... upon:

* * *

(c) The receipts from every sale, except for resale, of the following services:

(1) 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.

* * *

(9)(i) The furnishing or provision of an entertainment service or of an information service, which is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate)

of whatever nature, such as entertainment or information services provided through 800 or 900 numbers or mass announcement services or interactive information network services. Provided, however, that in no event (i) shall the furnishing or provision of an information service be taxed under this paragraph unless it would otherwise be subject to taxation under paragraph one of this subdivision if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner nor (ii) shall the provisions of cable television services to customers be taxed under this paragraph.

Section 527.3 of the Sales and Use Tax Regulations provides, in part, as follows:

(a) Imposition. (1) Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from the service of furnishing information by printed; mimeographed or multigraphed matter or by duplicating written or printed matter in any manner such as by tapes, discs, electronic readouts or displays.

(2) The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service.

(3) Among the services which are information services are credit reports, tax or stock market advisory and analysis reports and product and marketing surveys.

Example 1: A company distributes a newsletter to its subscribers weekly, showing the range of daily market prices for certain commodities. The newsletter comprises a taxable information service.

Example 2: A company publishes a bound volume monthly, which it furnishes to its subscribers. The volume contains information with respect to current advertising rates of various media in different localities. This publication is a taxable information service.

Example 3: A firm which supplies to business concerns listings of prospective customers' telephone numbers is providing a taxable information service and must collect the appropriate tax on the charges for such service.

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.

(4) Charges for credit information services, other than those that are transmitted orally, are subject to tax. The following rules shall apply in determining taxability of services that include both oral and written reports.

(i) Any fee for a written report is taxable.

(ii) Any fee for an oral report is taxable if the oral report is preliminary to the written report.

(iii) An annual fee for subscribing to a service is taxable if it entitles the subscriber to a certain number of free reports, or to reduced charges on reports, unless the subscriber is entitled only to oral reports.

(b) Exclusions. (1) Sales tax does not apply to receipts from sales of information services which are for resale as such.

(2) The sales tax does not apply to the receipts from the sale of information which is personal or individual in nature and which is not or may not be substantially incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed such information.

Example 1: The report submitted by a private detective agency to its clients is a personal report, the charge for which is not taxable.

Example 2: Automobile insurance damage appraisals performed for insurance companies are individual reports, the fees for which are not subject to sales tax.

Example 3: A computer service company has a program consisting of withholding tax tables. Using the same program, it computes the payroll for several subscribers. The fee charged to each subscriber is not taxable as it is for an information service, the results of which are not incorporated into reports furnished others.

* * *

(3) Sales tax does not apply to receipts from sales of information services which are only furnished orally. See paragraph (4) of subdivision (a) of this section. (emphasis added)

In Towne-Oller and Assoc. v. State Tax Commission, 120 AD2d 874, 504 NYS2d 544, the court held that the reports at issue, although tailored to satisfy the information request of the client, were not of a personal or individual character since the reports were created from the same raw data base used in preparation of similar reports to other customers, and that data base was derived from one general source.

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In the instant case, subscribers to Petitioner's account verification services contact Petitioner by telephone or an on-line computer to receive information of a specific applicant's checking account history. At the time the inquiry is made, Petitioner provides an oral or a printed on-line response to assist subscribers in making the decision as to whether or not to open an account based on the information provided. Such information is made available from a common data base which is used to satisfy all subscriber inquiries.

In accordance with Sections 1105(c)(1) and (9) of the Tax Law and Section 527.3 of the Sales and Use Tax Regulations, the furnishing of printed information via electronic readout or display or orally, if it would otherwise be subject to tax if furnished by printed matter, is subject to sales and use taxes unless the information provided is personal or individual in nature. Pursuant to Towne-Oller and Assoc. v. State Tax Commission, *supra*, information, although tailored to satisfy the request of a particular client, is not personal or individual in nature if created from the same raw data base used in preparation of similar reports to other customers. Accordingly, since Petitioner uses the same data base to satisfy all of its subscriber's inquiries, the information furnished orally or on-line is not personal or individual in nature, and is, therefore, subject to State and local sales and use taxes pursuant to Sections 1105(c)(1) and (9) of the Tax Law and Section 527.3 of the Sales and Use Tax Regulations. It is noted that if the tax is imposed under Section 1105(c)(1) of the Tax Law the State rate is 4% and that if the tax is imposed under Section 1105(c)(9) of the Tax Law the State rate is 9%.

DATED: May 8, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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