

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

TSB-A-95 (8)S
Sales Tax
February 23, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941014A

On October 14, 1994, a Petition for Advisory Opinion was received from Kathleen Carey, Freed Maxick Sachs & Murphy, P.C., 800 Liberty Building, Buffalo, New York 14202.

The issue raised by Petitioner, Kathleen Carey, is whether the sale of its client's software product and services are subject to sales tax.

Petitioner's client has developed a software product which it is marketing to banks and warehouse lenders. This system will electronically link the banks and the warehouse lenders for the purpose of transmitting loan information and data. The link is provided by an electronic bulletin board service provided by Petitioner's client. Each of the banks will have an account (mailbox). The software will enable the banks to transmit information between themselves. This software is designed to automate the process of inputting financial information relating to a loan application. Eliminating the double data entry required by both banks and warehouse lenders for loan applications substantially improves the bank's ability to process funding requests and saves time in labor costs.

The warehouse lenders will access the client's software and input financial information related to a particular applicant's loan information. This information will then be transferred electronically to the client's main computer until such time as the banks would access the information. The banks will either accept or reject the loan applications and will transmit that information electronically back to the warehouse lenders. The warehouse lenders will print any reports at their locations.

The transmission of information is not a shared database. The warehouse lenders and the banks have no capability of accessing information from other warehouse lenders or banks. They can only access their own proprietary database.

There are different types of files which can be transmitted through Petitioner's client's software including loan requests, reports, word processing documents, spreadsheets and data.

Petitioner's client is located in New York State. The banks and warehouse lenders are located throughout the country. Petitioner's client bills monthly in advance for licensing fees; and in arrears for usage charges, file transfer charges and other charges relating to the software.

Petitioner's client does not generate any reports, either for the bankers or the warehouse lenders. It acts strictly as an electronic bulletin board service.

Section 1105(b) of the Tax Law imposes a tax upon: "The receipts from every sale, other than sales for resale. . . of telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service."

Section 527.2(a)(2) of the Sales and Use Tax Regulations state:

Although this tax is generally known as the "consumer's utility tax," the intention of the statute is to tax the enumerated sales and services whether or not rendered by a company subject to regulation as a utility company. The words "of whatever nature" indicate that a broad construction is to be given the terms describing the items taxed. The inclusion of the word "service" indicates an intent to tax, under this provision, items that are furnished as a continuous supply while the vendor-vendee relationship exists. (Emphasis supplied)

Section 527.2(d)(2) of the Sales and Use Tax Regulations provides, in part, as follows:

The term 'telephony and telegraphy' includes use or operation of any apparatus for transmission of sound, sound reproduction or coded or other signals.

Example 3: Message switching services, transmitted to a computer over lines leased from a communications carrier are telegraph services subject to the tax imposed under section 1105(b) of the Tax Law.

Petitioner's client is providing, inter alia, a network upon which its customers can communicate by computer or electronically with one another by entering and retrieving messages. Petitioner's client does not provide any additional information to its customers nor does it manipulate or otherwise process its customers' information into another form; rather, Petitioner's client stores its customers' information so that its customers may later retrieve the same information.

Accordingly, Petitioner's client is providing a "telephony or telegraphy service" in accordance with the meaning and intent of Section 527.2(d)(2) of the Sales and Use Tax Regulations the receipts from which are subject to sales tax in accordance with Section 1105(b) of the Tax Law and Section 527.2(a)(2) of the Sales and Use Tax Regulations. Those messages that are interstate or international are exempt from the sales tax.

DATED: February 23, 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.