STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S940906A

September 6, 1994, a Petition for Advisory Opinion was received from TeleCheck Services, Inc., 5251 Westheimer, Houston, TX 77056-5404.

The issue raised by Petitioner, TeleCheck Services, Inc., is whether Petitioner's receipts for its check guarantee service paid by its New York customers are subject to the tax imposed by Section 1105(c) of the New York State Tax Law.

Petitioner presents the following facts. Petitioner is a Delaware corporation headquartered in Houston, Texas. First Financial Management Corporation, a Georgia corporation ("FFMC"), directly or indirectly has owned all of the outstanding stock of Petitioner since July 1992, when FFMC acquired all of the outstanding shares of Petitioner, then a Hawaii corporation.

Petitioner's customer base consists of retail merchants of various sizes (from national retail chains to "Mom and Pop" operations). Petitioner offers two specific types of services to merchants with respect to customers who wish to pay by check. The first service is a check "verification" service. For a fee calculated per transaction, a merchant who subscribes to the check verification service receives information (i.e., "verification" or "nonverification") from Petitioner as to whether a customer offering a check in payment to the merchant meets certain predetermined standards for accepting the check. The second service is a check "guarantee" service. Under this service, Petitioner generally will purchase a check from a subscribing merchant at its face amount if a check "guaranteed" by Petitioner is subsequently dishonored. These two services are sold separately and Petitioner's customers are free to purchase either the check verification service and/or the check guarantee service. The check verification service is not at issue in this Advisory Opinion.

The check guarantee service allows a subscribing merchant, before accepting a check from a customer, to obtain a "guarantee" electronically from Petitioner that should the check ultimately be dishonored, Petitioner will purchase the check from the merchant at face value. (The maximum amount which Petitioner will pay for any dishonored check is established by negotiations between Petitioner and the merchant.) When a merchant uses the check guarantee service, it contacts Petitioner prior to accepting the check. Petitioner then decides, based on its own criteria, whether to accept ("guarantee") or reject (not "guarantee") the check. Petitioner communicates its decision to the merchant by electronically indicating whether the check has been "guaranteed". If Petitioner guarantees the check, Petitioner, in effect, agrees to purchase the check from the merchant at its face amount should the check ultimately be dishonored. If Petitioner does not guarantee the check, Petitioner will not purchase the check from the merchant. The same charge is imposed for the check guarantee service of a particular check about which the merchant inquired, whether or not Petitioner guarantees that check.

When a consumer offers a check in payment for goods or services, a subscriber to the check guarantee service contacts Petitioner's data center located in Houston, Texas by means of either a "point-of-sale terminal" or a touch-tone telephone. The subscriber initiates an inquiry by keying information into the point-of-sale terminal or, if contact is made by touch-tone telephone, by pressing touch-tone keys in response to oral prompts generated by Tabitha, a "talking" computer. The information requested by. Petitioner includes the bank account number or driver's license of the check writer, the amount of the check, and the check number. Within a few seconds after the subscriber has furnished the necessary information, Petitioner's data center conveys one of the three following codes to the subscriber:

> First Code: Petitioner's data center requests the subscriber to call one of Petitioner's operators because Petitioner's computer tentatively has determined that the identification offered previously has been used to write a bad check that remains unpaid. To provide this service effectively, Petitioner maintains in its databases, among other items, a list of identification numbers previously used for checks that were dishonored and remain unpaid. In order to maximize the number of checks that it guarantees, Petitioner will proceed to decline to guarantee payment on a check only upon oral confirmation by Petitioner's operator of the identity of the check writer.
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> Second Code: Petitioner's data center will decline to guarantee payment on a check if the check writer's risk profile exceeds certain parameters contained in Petitioner's risk management system. These parameters are determined in the sole discretion of Petitioner and are not communicated to the subscribers.
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> Third Code: If the check writer is not included in Petitioner's negative data base and satisfies Petitioner's risk parameters, Petitioner sends a confirmation code to the subscriber agreeing to guarantee the check should it be dishonored to the extent set forth here.

Petitioner generally reimburses a subscribing merchant for the face amount of any bad check that Petitioner previously has authorized, up to a preestablished warranty limit, which applies on a check-by-check basis. Petitioner generally does not reimburse subscribers for payment on a check that has been stopped due to a dispute over goods or services. The preestablished warranty limit is negotiated separately with each subscriber and depends upon the risk profile of the subscriber. Factors taken into account by Petitioner in determining the warranty limit include the nature of the subscriber's business and the average check amount in its business. If Petitioner subsequently collects from the merchant's customer an amount in excess of the warranty limit, then Petitioner remits the excess amount to the merchant.

Merchants purchasing the check guarantee service are subject to three separately calculated and separately stated charges. The first charge is a transaction fee of 10¢ for each check for which

Petitioner receives a guarantee request. The second charge is an additional transaction fee of 75¢ per call when a merchant initiates a "live" telephone call with Petitioner. This additional fee is to encourage customers to use the point of sale terminal equipment. The third charge, the "guarantee charge", is a fee imposed at a rate that generally ranges between 1% and 3 1/2% of the face amount of each check (subject to a monthly minimum charge) for which a merchant requests Petitioner's "guarantee". The guarantee charge is negotiated between Petitioner and the merchant at the time the merchant subscribes to the service. The minimum monthly charge is approximately $30.00 per month. This monthly minimum fee is credited against the per check "guarantee charge", but is not credited against the 10¢ "inquiry" transaction fee or 75¢ "live" telephone call transaction fee.

Section 1105(c) of the Tax Law imposes tax on receipts from the sale of certain enumerated services. The check guarantee service provided by Petitioner is not an enumerated service subject to tax under Section 1105 of the Tax Law. The charges for the service, i.e., the transaction fees and the "guarantee charge", therefore, are not subject to sales and compensating use taxes.

/s/

DATED: April 19, 1996

DORIS S. BAUMAN
Director
Technical Services Bureau

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