

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

TSB-A-96 (3)S
Sales Tax
January 25, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950425B

On April 25, 1995, a Petition for Advisory Opinion was received from Morrow & Co., Inc., 909 Third Avenue, 20th Floor, New York, New York 10022.

The issue raised by the Petitioner, Morrow & Co., Inc., is whether receipts from its "stock watch service" are excluded from sales tax under the provisions of Section 1105(c)(1) of the Tax Law. This section of the law excludes 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 from the tax as it applies to information services.

The petition sets forth the following facts.

Petitioner is in the business of providing proxy solicitation and stockholder identification information services to publicly traded domestic and foreign corporations. Petitioner's nominee identification/stock surveillance service ("stock watch service") provides clients with individual shareholder and debtholder intelligence. Clients retain Petitioner's "stock watch service" to enhance their knowledge of the current ownership of their stock. The "stock watch service" evolved from a demand for accurate, timely market intelligence geared to the confidential and unique needs of clients. This demand was expressed by clients of Petitioner's proxy solicitation service during the late 1970's and early 1980's who needed to know who owned their stock and who also required information regarding the position movements of specific shareholders, surveillance of possible "toehold positions" by threatening "corporate raiders," and voting intelligence on issues requiring shareholder approval. Expertise in the proxy solicitation field allowed Petitioner to respond to clients' needs. Petitioner had developed numerous contacts for obtaining information regarding the holdings of major institutions and has always maintained a working knowledge of the depository system and a unique understanding of custodial relationships, including some knowledge of nominee history.

Petitioner gathers information through a comprehensive process that utilizes internal and multiple external resources. All investigative efforts and analyses are executed solely by Petitioner's personnel in order to maintain confidentiality and to avoid the instigation of rumors concerning clients' stock. Reports furnished by Petitioner to clients are private and confidential and, by contract, may not be furnished to others. The quality of the information that Petitioner compiles for its clients is the result of experience accumulated over many years, which allows Petitioner to analyze data without relying unnecessarily on unconfirmed reports.

Initial steps in the surveillance process require weekly updates of positions held through major depository accounts, of which the Depository Trust Company is the largest. These security position listings may not be released to Petitioner without a client first writing a letter authorizing Petitioner to receive this information. Depository Trust Company requires separate letters for weekly subscriptions and daily listing requests. To receive a daily security position listing from the Midwest Securities Trust Company, another authorization letter is necessary. Philadelphia Securities Trust Company also requires an authorization letter prior to releasing account information. Further steps in the surveillance process require similar authorization. To receive information regarding non-objecting beneficial owners, a client's authorization is required. Account breakdowns from various custodian banks and brokerage firms also may necessitate a client's authorization. Bessemer Trust must receive an authorization letter prior to releasing account information. Brown Brothers Harriman requires a letter of authorization. Merrill Lynch, Pierce, Fenner & Smith also needs a letter of authorization to release a geographical breakdown of its holders. As the "stock watch service" has matured, numerous sources have been developed to assist in the identification process. ILX Systems, Nelson's Directory of Investment Managers, Morningstar Mutual Funds, The Money Market Directory of Pension Funds, and Vickers Stock Traders Guide are some examples of sources used by Petitioner.

The "stock watch service" is not a fixed quantity but a continuing process. Accurate and timely information is provided as a result of diligent research and analysis, executed on a case-by-case basis. The report given to one client is different from the report given to another client. It is as different as the identities of the stockholders of one client are from the identities of the stockholders of another. Petitioner does not have a databank with a list of all the stockholders of every company which it can access by entering the name of a client and thereby obtain a list of the client's stockholders. It is a constantly changing situation, especially when someone is in a program of acquiring stock. The "stock watch service" provided to a client by Petitioner is a listing of the client's stockholders at a particular time. It is not providing a list from a common database or providing compilations that could be easily provided by the client itself if it were to take the trouble to do so. It is a specialized, individual information service which is the result of investigation, analysis and experience.

Section 1105(c)(1) of the Tax Law imposes tax on receipts from every sale, except a sale for resale, of:

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, and excluding meteorological services.

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Section 1105(c)(8) of the Tax Law imposes tax on receipts from every sale, except a sale for resale, of:

Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes of any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

The information that is furnished by Petitioner to clients is private, confidential and unique to each client. The research efforts conducted by Petitioner are tailored in each instance to maintain confidentiality and to meet the unique needs of the client. In the instant case, the "stock watch service" that is provided by Petitioner is considered to be the furnishing of information which is personal or individual in nature and the information is not or may not be substantially incorporated into reports furnished to other persons. In addition, this service is not a protective or detective service within the meaning of Section 1105(c)(8) of the Tax Law. Accordingly, receipts from the sale of the service are not taxable as receipts from the sale of an information service pursuant to Section 1105(c)(1) of the Tax Law or as receipts from the sale of a protective or detective service pursuant to Section 1105(c)(8) of the Tax Law.

DATED: January 25, 1996

/s/
DORIS S. BAUMAN
Director
Technical Services Bureau

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