

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

TSB-A-97(9)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960731B

On July 31, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Equifax Services, Inc. and Equifax Check Services, Inc., P.O. Box 4081, Atlanta, GA 30302-4081.

The issue raised by Petitioners, Equifax Services, Inc. (hereinafter "Equifax") and Equifax Check Services, Inc. (hereinafter "Equifax Check"), is whether Equifax Check's receipts from the sale of its check guarantee service to its New York customers are subject to the tax imposed by Section 1105(c) of the New York State Tax Law and Section 11-2040 of the New York City Administrative Code.

Petitioners submit the following facts as the basis for this Advisory Opinion.

Equifax is a Georgia corporation, authorized to do business in New York, with its principal office at 1600 Peachtree Street, N.W., Atlanta, Georgia. Equifax Check, a Delaware corporation, is a wholly-owned subsidiary of Equifax. Equifax Check is authorized to do business in New York and its principal office is in Tampa, Florida. Equifax Check was previously known as Telecredit Service Corporation.

Equifax Check offers to guarantee checks given to merchants (e.g., retailers, hotels, motor vehicle repair shops, and other such businesses) via the "Welcome Check" guarantee program which operates as follows:

1. A participating merchant who desires to present checks made payable to the merchant for guarantee by Equifax Check pays Equifax Check a fee of no less than fifty cents for each check offered. In addition, certain low volume merchants pay Equifax Check a minimum of \$50.00 per month for maintaining a check guarantee account with Equifax Check.

2. Equifax Check agrees to guarantee checks given to the participating merchant if such checks have been presented in accordance with the Welcome Check guarantee agreement.

3. No information about the customer's creditworthiness or credit report of any sort is provided to the participating merchant pursuant to the Welcome Check agreement. Rather, it is the merchant which provides information to Equifax Check about the merchant's customer and the customer's check.

4. The participating merchant must inform Equifax Check that the following prerequisites have been met in order for Equifax Check to consider whether or not to guarantee a proffered check:

- a. the name of the individual or business payor is commercially imprinted on the check;
- b. the residence address, phone number, and driver's license or non-driver identification card number of the individual payor, or business address, business phone number and license number of the business representative, are listed on the check;
- c. the check is payable to the participating merchant;
- d. the check is properly signed by the payor/customer;
- e. the check is endorsed by the participating merchant;
- f. the check is drawn on a United States bank;
- g. the check is for the full amount of the purchase; and
- h. in the case of an individual customer, the check bears the same date that Equifax Check agreed to purchase the check, or in the case of a business customer, the same or previous date.

5. Equifax Check applies only the following three criteria in considering whether or not to guarantee a check meeting the above prerequisites which is offered by the participating merchant for guarantee:

- a. does the check exceed the transaction limit in the participating merchant's agreement with Equifax Check;
- b. does Equifax Check currently hold dishonored checks from the payor which remain unpaid; and
- c. has the payor recently presented several large checks which Equifax Check has agreed to purchase?

6. Equifax Check will then either:

- a. commit to purchase the check if dishonored, i.e., "guarantee" the check, or
- b. decline to make such a commitment, advising the participating merchants of such business decision and which of the three exclusive criteria noted in paragraph 5 above are the basis for its decision.

7. There is no credit analysis, no examination of creditworthiness, and no credit reporting in this process. A very solvent, very creditworthy customer could fail to meet the exclusive criteria employed by Equifax Check (see paragraph 5 above) and that customer's check would not be guaranteed.

Conversely, the customer could have a particularly poor credit history/record and be most uncreditworthy, and his/her check presented consistent with the prerequisites and criteria noted would be guaranteed by Equifax Check.

Applicable Law and Opinion

Section 1105(c) of the New York State Tax Law and Section 11-2040 of the New York City Administrative Code impose tax on receipts from the sale of certain enumerated services. The check guarantee service provided by Equifax Check is not one of the enumerated services subject to tax under Section 1105(c) of the New York State Tax Law or Section 11-2040 of the New York City Administrative Code. The fees paid in connection with this service, i.e., the fee of not less than fifty cents for each check offered for guarantee and the minimum fee of \$50.00 per month for maintaining a purchase agreement account with low volume merchants, therefore, are not receipts subject to New York State and local sales and compensating use taxes. (See H.O. Penn Machinery Co., Inc., Adv Op Comm T&F, June 29, 1995, TSB-A-95(26)S and TeleCheck Services, Inc., Adv Op Comm T&F, April 19, 1996, TSB-A-96(22)S.)

DATED: February 24, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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