

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

TSB-A-97(30)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960826C

On August 26, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Hometown Online, Inc., P.O. Box 592, Warwick, New York 10990. Petitioner, Hometown Online, Inc., provided additional information pertaining to the Petition on October 29, 1996.

The issue raised by Petitioner is whether the flat monthly fees that Petitioner charges its customers for access to the Internet are subject to New York State and local sales taxes.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner provides access to the Internet for customers who are located in and outside of the service area of its parent company, the Warwick Valley Telephone Company. Petitioner's parent company services Southeastern New York (Orange County) and adjacent areas in New Jersey. Petitioner has expanded its service beyond these boundaries into neighboring areas in both states and also into nearby areas in Eastern Pennsylvania. Telephone facilities are leased in these neighboring areas, allowing Petitioner to establish local telephone numbers that customers may reach free of toll charges. All of Petitioner's customers, including customers in Pennsylvania, are served by Internet hub equipment located in appropriate locations in New York and New Jersey.

Petitioner charges its customers flat fees on a monthly basis for providing the recurring service of Internet access. Most customers subscribe to either unlimited service at \$19.95 per month or five hours of service per month at \$8.95. Customers pay no telecommunication transport charges on their Internet access. (Some of Petitioner's customers, primarily business and government entities, also purchase Petitioner's home page and/or banner services at additional charges; however, these services are not at issue in this Opinion.)

When customers subscribe to Petitioner's Internet access service, they must have software that will allow their equipment (e.g., personal computers) to communicate with Petitioner's equipment and that will also allow the customers to navigate throughout the Internet. This software may be obtained from Petitioner or from others. If obtained from Petitioner, the customers receive the software on diskettes and may receive support from Petitioner if needed. Petitioner does not charge its customers a separate fee for this software or assistance. It is considered part of the initial monthly charges. Petitioner is under a licensing agreement with a third party to pay a one-time charge for each customer who receives a diskette from Petitioner. (It is noted that Petitioner has not inquired regarding the taxability of these or any other purchases and the taxability of Petitioner's purchases is not addressed in this Opinion.)

As part of the flat fees for Internet access, Petitioner's customers' also receive E-mail privileges (both Internet and non-Internet communications), news headlines and access to home pages and banners created by Petitioner that are not published on the Internet. No other services are offered as part of the flat monthly fees.

Opinion

With certain exceptions, Section 1105(b) of the Tax Law imposes sales tax upon receipts from the sales of telephony and telegraphy and telephone and telegraph services. A recent Technical Services Bureau Memorandum, Internet Access Charges Not Subject to Sales Tax and Telecommunications Excise Tax, January 24, 1997, TSB-M-97(1)S provides in part:

Effective on or after February 1, 1997 the Department is implementing the new Internet policy recommended in its January 1997 report on *Improving New York State's Telecommunications Taxes*. Internet access charges are considered an unenumerated service not subject to the New York state and local sales tax.... Internet access charges may also include items such as communications/navigation software, E-mail privileges, news headlines, and certain website services. When these services are furnished as part of a combined Internet access charge, they are deemed incidental to the provision of Internet access and the charge is not subject to sales tax....

Under the new Internet policy implemented February 1, 1997, the Internet access service that is provided by Petitioner to its customers (whether the customers are located within or outside of this State) is not included among the enumerated services that are subject to New York State and local sales and compensating use taxes. Furthermore, the communication/navigation software, E-mail privileges, news headlines and access to certain home pages and banners that are included as part of Petitioner's flat monthly fees are incident to the Internet access service and do not make the service taxable. Accordingly, beginning February 1, 1997, the flat monthly fees that Petitioner charges its customers for access to the Internet and related amenities are not subject to tax. Prior to February 1, 1997, the fees charged to Petitioner's New York customers for Internet access service and related amenities were subject to sales tax.

DATED: May 28, 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.