

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

TSB-A-88(11)S
Sales Tax
January 21, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S870811B

On August 11, 1987, a Petition for Advisory Opinion was received from Venture Capital Network (VCN) of New York, Inc., P.O. Box 248, Lake Placid, New York 12946.

The issue raised is whether Petitioner is required to collect sales tax on the application fees paid by participants in its computer-assisted referral program for matching potential investors with business enterprises seeking investment capital.

Organized as a not-for-profit New York membership corporation and aided by the Economic Development and Technical Assistance Center (TAC) of the State University College at Plattsburgh, Petitioner hopes to encourage the creation of jobs through stimulating investment in small business in northern New York. Start-up expenses for VCN were funded by a grant TAC received from a New York business corporation unconnected with VCN. Ongoing administrative expenses are paid solely by the annually renewable application fees.

Petitioner compiles information about opportunities for capital investment and identifies interested investors from questionnaires completed by each program participant. If, after processing this information, the computer matches an Investment Interest Profile with an Investment Opportunity Profile, the latter profile is forwarded to the investor who may then request the business "executive summary" and profit and loss statement submitted with the questionnaire and, lastly, the business name and address. Petitioner states that searches are constantly run and a report is sent each time a match is made, without any limitation. Providing only this introductory matching service, Petitioner will not add comments or advice to the reports; its role ceases when names and addresses have been exchanged.

Petitioner asserts the application fees are not taxable receipts because VCN members are not guaranteed a report. Citing Matter of New York Life Ins. Co. v. State Tax Commission, 80 AD2d 675, Petitioner further takes the position that, were the reports held information services, they would fall under the exclusionary provision contained in Tax Law § 1105(c)(1).

The Tax Law imposes a tax on the receipts from every retail sale of tangible personal property and from every sale of certain specified services, except where such property or services are purchased for resale. Among the taxed services is the furnishing of information by printed, mimeographed or multigraphed 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.

The term "sale, selling or purchase" includes the rendering of any taxable service for a consideration or any agreement therefor. Tax Law § 1105(a), (c)(1); §1101(b) (5).

Searches, surveys, investment letters, mailing lists, and credit reports are examples of information services. The latter are subject to these rules:

- (i) Any fee for a written report is taxable.
- (ii) Any fee for an oral report is taxable if the oral report is preliminary to a written report.
- (iii) An annual fee for subscribing to a service is taxable if it entitles the subscriber to a certain number of free reports or to reduced charges on reports 20 NYCRR527.3(a) (4).

The taxability of charges made for a computerized dating service was addressed in Department of Taxation and Finance Sales Tax Information letter No. 26, May 26, 1967:

The person using the [dating] service is supplied with a detailed questionnaire to find out his or her background, interests, likes and dislikes, and other physical and mental characteristics. The answers are put through a computer, and the person is matched with compatible persons of the opposite sex living in the same geographical area. The person is then supplied with the names, addresses and phone numbers of several persons of the opposite sex.

The service would be excluded from information services taxable under section 1105(c)(1) if a psychologist gave examinations to two persons on an individual basis in order to determine their compatibility. But where such a service is standardized and information concerning compatibility is supplied to other persons in the area who are seeking a suitable date, it is my opinion that such service is not personal or individual in nature.

Consequently, the charge made for a computerized dating service is subject to the New York State and local sales and use tax.

Clearly, Petitioner renders information services similar to credit reporting or dating services for a consideration - the annual fee. To exempt this charge from taxation both criteria for exclusion contained in Section 1105(c)(1) of the Tax Law, cited above, must be met.

In the case of New York Life Insurance, *supra*, both conditions were fulfilled. Confidential character reports, purchased by an insurer, containing highly personal information about individuals were held to be of the uniquely personal and individual nature contemplated by the statute. It was further ruled that the mere possibility of inclusion of data kept in the seller's file into reports to others was not sufficient to establish "substantial incorporation" in the absence of proof that the information was in fact so used.

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Petitioner has presented no information which would indicate that the information supplied by it is of the uniquely personal and individual nature contemplated by the statute. Furthermore, not only is there no prohibition against furnishing the information to other participants but it is supplied for that express purpose and multiple matches, each generating a report, are desirable.

Accordingly, since the annual fee entitles a participant to receive a report whenever a match is made, it is taxable pursuant to Tax Law § 1105(c)(1).

DATED: January 21, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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