

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

TSB-A-90 (43)S
Sales Tax
August 20, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900420C

On April 20, 1990 a Petition for Advisory Opinion was received from Paul R. Comeau, Hodgson, Russ, Andrews, Woods & Goodyear, 1800 One M & T Plaza, Buffalo, New York 14203.

The issue raised by Petitioner, Paul R. Comeau, is what is the proper amount of sales tax to collect on the sale of information reports that are delivered to locations that are within and without New York State.

Several information service companies (hereinafter "Sellers") provide professional research and marketing advice for clients located throughout the United States and the world. For purposes of this advisory opinion request, it is assumed that these services constitute information services subject to sales tax pursuant to Section 1105(c)(1) of the Tax Law. As part of the provision of these professional services, Sellers will collect data from various sources. The data is collated and synthesized into reports. Paper and magnetic tape (hereinafter "hard copy") reports are then mailed to clients, while electronic reports are transmitted to client terminals or data bases.

Among Sellers' clients are corporations which operate on interstate and/or international levels. These corporations have offices in several different cities, states and countries. Each report provided to a particular client is delivered to multiple addresses, with some reports delivered to the client's New York State offices, and others delivered to the client's offices located in other states or countries. In either case, the report, once delivered, may be reproduced by the client and distributed among its offices in different cities, states and countries.

Section 527.3 of the Sales and Use Tax Regulations provides:

Sale of information services. Tax Law, §1105[c][1] a) Imposition.
(1) Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from the service of furnishing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any manner such as by tapes, discs, electronic readouts or displays.

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides:

The sales tax is a "destination tax," that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate. For special rule relating to motor vehicles, see Part 540 of this Title.

Section 531.1 of the Sales and Use Tax Regulations provides in part:

Imposition of compensating use tax

(b) Taxable uses. The uses enumerated herein are subject to tax.

* * *

(3) Information services which would be subject to tax under subdivision (1) of section 1105(c) of the Tax Law.

Although sellers deliver information reports both within and without New York State, only those reports which are delivered in New York State are subject to sales tax in accordance with Section 525.2(a)(3) of the Sales and Use Tax Regulations. Therefore when the information reports are delivered by electronic means to clients who have offices both within and without New York State, sales tax should be allocated according to the number of the clients' offices within and without New York State having access to the electronic reports. However, where such reports are delivered by hard copy in paper, disc or tape form to clients who have offices within and without New York State, sales tax should be allocated according to the number of copies of the reports delivered by Petitioner within and without New York State. If sellers' customers later bring some reports into New York State, such customers would be required to pay the compensating use tax on such reports in accordance with Section 531.1(b)(3) of the Sales and Use Tax Regulations.

DATED: August 20, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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