

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

TSB-A-91 (5)S
Sales Tax
January 2, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S901121B

On November 21, 1990 a Petition for Advisory Opinion was received from American Home Food Products, Inc., 685 Third Avenue, New York, New York 10017.

The issue raised by Petitioner, American Home Food Products, Inc., is what is the proper amount of sales tax to be collected from it on the purchase of information reports that are delivered to locations that are within and without New York State.

Information service companies (hereinafter "Sellers") provide professional research and marketing advice to Petitioner who has offices 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 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 Petitioner, while electronic reports are transmitted to Petitioner's terminals or data bases.

Petitioner operates on interstate and international levels. It has offices in several different states and countries. Each report provided to it is delivered to multiple addresses, with some reports delivered to its New York State offices, and others delivered to its offices located in other states or countries. In either case, the report, once delivered, may be reproduced by Petitioner and distributed among its offices in different 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 Petitioner, who has offices both within and without New York State, sales tax should be allocated according to the number of its 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 Petitioner, sales tax should be allocated according to the number of copies of the reports delivered to Petitioner within and without New York State. If Petitioner later brings some reports into New York State, it 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. Paul R. Comeau, Adv Op Comm T & F, August 20, 1990, TSB-A-90(43)S.

DATED: January 2, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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