

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

TSB-A-93 (24)S
Sales Tax
April 12, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920513C

On May 13, 1992, a Petition for Advisory Opinion was received from Thomson Financial Networks, Inc., 11 Farnsworth Street, Boston, MA 02210.

The issues raised by Petitioner, Thomson Financial Networks, Inc., are:

1. Whether fees paid to Petitioner for the right to be listed in the Autex computerized information directory ("Trading Information System" hereinafter "TIS") are subject to sales tax.
2. Whether oral transmissions of TIS are subject to sales tax.
3. Whether fees paid to the Alert Division of Petitioner for processing institution/investor delivery instructions to broker dealers are subject to sales tax.
4. Whether sales lead referral fees ("Premiums") paid to Petitioner by executing brokers used in the Petitioner computerized information directory are subject to sales tax.
5. Whether fees paid to the Corporate Service Division of Petitioner for processing corporate news releases are subject to sales tax.

In reference to issues "1" and "2", Petitioner operates a TIS through its Autex Division. The TIS service enables brokers (the "providers") and institutions and money managers (the "receivers") engaged in buying or selling large blocks of securities to communicate interest in such transactions to others on a selective basis through a system of telephone and computer equipment and electronic display screens owned by or leased to Autex.

The messages of the providers are communicated to Autex in Massachusetts via interstate telephone lines leased by Autex from the telephone company. Such communication may be made orally to Autex by telephone or, for those providers having such equipment by means of a computer terminal supplied by Autex. In Massachusetts, the information is entered in Autex's computer, processed and from there transmitted via telephone lines leased by Autex to PC terminals supplied by Autex to the receivers. If a receiver does not have a direct connection with Autex the information may be transmitted through a modem to the receiver's PC. If the receiver does not have the appropriate equipment to receive the information via computer, it will be transferred orally by telephone.

The prices charged for the TIS service does not subsidize the provider or the receiver. Providers are charged based upon the number of advertisements placed on TIS. Receivers are charged based upon the number of advertisements received on TIS.

Providers

The TIS service allows providers to input advertisements/announcements on their open securities positions. After the purchase/sale is made, they can advertise that they have made a market in that security by announcing the completed trade on TIS. Currently, Petitioner's billing system cannot separately charge providers for each category listed below. The provider receives one invoiced amount for message formats used even though they may use one or more (or all) of the features listed.

A. Interest Messages (65%)

Allows providers to announce/advertise to receivers their interest to buy or sell large blocks of equity securities or bonds.

B. Advertised Trade Messages (15%)

Allows providers to announce/advertise that they have executed a trade to a provider or receiver.

C. Super Messages (6%)

Allows providers an open format to announce/advertise a detailed interest to sell or buy securities to a receiver.

D. Recap Messages (8%)

If requested to do so, Autex will supply a provider with a recapitulation of 5 types of current (and recently canceled) communications Autex has received, organized in accordance with the provider's requests.

1. Receiver's Super Messages.
2. Receiver's Direct Messages.
3. All Providers Advertised Trade Messages.
4. Provider's Interest Messages.
5. Provider's Super Messages.

E. Direct Message (1%)

Allows providers an open format to announce/advertise a detailed interest to sell or buy securities to one receiver only.

F. Canceled Message (4%)

Allows provider to cancel or Expunge a Interest, Super, Direct or Advertised Trade Message.

G. Error Message (1%)

An invalid message format, (i.e. a provider ending a message to a nonexistent receiver).

H. Display Message (negligible)

Allows provider to display the Autex computerized information directory. The computerized information directory contains a list of all providers who have paid Autex to be listed in their information publishing service and a list of all TIS receivers. The directory contains the trader's name address, phone # and stock exchanges used.

Autex charges fees to providers for leased equipment and rights to announce/advertise/disseminate information on TIS. Sales tax is collected based on the specific equipment being leased.

Receivers

The TIS service allows receivers to retrieve information so that they can obtain the best advertised price and volume information available to properly manage their portfolios and do business with the providers (i.e. obtain the optimal price for their purchase or sales of equity securities). Currently Petitioner's billing system cannot separately charge receivers for each category listed below. The receiver receives one invoiced amount even though they may use one or more (or all) of the features listed.

A. Super Messages (negligible)

Allows receivers an open format to communicate a detailed response to a provider's announcement/advertisement.

B. Recap Messages (98%)

If requested to do so, Autex will supply a receiver with a recapitulation of 6 types of current (and recently canceled) communications Autex has received, organized in accordance with the provider's request.

1. Receiver's Super Messages.
2. Receiver's Direct Messages.
3. All Providers Advertised Trade Messages.
4. Provider's Super Messages.
5. Provider's Direct Messages.
6. Provider's Interest Messages.

C. Direct Message (negligible)

Allows receivers an open format to communicate a detailed response to one provider's announcement/advertisement.

D. Display Message (1%)

Allows receiver to display the Autex computerized information directory. The computerized information directory contains a list of all providers who have paid Autex to be listed in their information publishing service and a list of all TIS receivers. The directory contains the trader's name, address, phone # and stock exchanges used.

E. Error Message (negligible)

An invalid message format, (ie., a receiver is not allowed to send an interest message or announce an advertised trade).

Autex charges fees to receivers for leased equipment and rights to receive information on TIS. Sales tax is collected on equipment based on the specific equipment being leased.

In reference to issue "3", Petitioner operates the Alert service through its Trading Support Division (hereinafter "TSD"). The Alert service enables investors (the "providers") and broker dealers (the "receivers") engaged in settling security transactions to communicate delivery instructions of such transactions to others on a selective basis through a system of telephone, computer equipment modems and electronic display screens owned by them. Providers use the Alert system to announce to receivers their delivery instructions.

Receivers use the Alert service to input their account numbers (cross referencing) so the providers indexed data can be referenced to receivers back office indexing. This ensures that receivers information is up to date for successful trade settlement.

The messages of providers are communicated to the TSD in Massachusetts via facsimiles, mail, or, for those providers having such equipment by a computer terminal or modem they supply. In Massachusetts, the "account information" is entered in the TSB computer, processed and from there an "Alert" is transmitted via telephone lines leased by the TSB to PC terminals owned by receivers or by facsimiles for receivers not having such equipment.

Due to the number of TIS transactions (some 2,000,000 in one month) and the time sensitive nature of the placement and receipt of messages, the computer time delay processing burden to track provider with receiver would effect the integrity of the TIS service.

While it may be possible to link the Alert providers with receivers, this would require a complete rewrite of the host software and billing software at a considerable cost to Petitioner. This rewrite would add nothing to the value or integrity of the product since the market does not need or require this information.

An Alert is a message indicating that information in the delivery instructions is new or has been changed. It contains information on the name of account and the changed or new fields. The receiver can either delete the Alert (not view the message) or view the changed fields by retrieving the Alert (ie. subscriber ID #8086, bank account).

Account information is the actual detailed delivery information. If a receiver wishes to see the account information (ie. bank account # 004-367, Chase Manhattan) it must access the database in Massachusetts and retrieve that account information.

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The TSD charges providers a monthly registration fee, a monthly usage fee based on the # of accounts retrieved (no fee is charged for the retrieval of Alerts), and a telecommunication fee based on the # of minutes logged onto the Alert system.

With reference to issue "4", Petitioner contacts institutional investment firms (the "customers") that would like to receive the information provided by Petitioner, but do not want to pay the required fees. In such instances, the customers are advised that the information service may be provided to them and the cost would be underwritten by a specific executing broker (the "brokerage"). In return it is expected that the customer will use such brokerage when making trades motivated by access to the information service. Because such arrangements are ultimately beneficial to the brokerage company, in addition to paying the fees charged by Petitioner for their information services they also pay a premium to Petitioner for each customer that is referred to them in this manner. Each charge is separately charge invoiced. Sales tax is only collected upon fees paid by the brokerage for receiver services provided to customers.

In reference to issue "5", Petitioner operates the Corporate Release Service (the "service") through its Corporate Services Division. The service enables corporations (the "providers") to publish time-sensitive corporate news releases or other similar information (the "releases") to corporations, portfolio managers, analysts and traders who work for institutional investment firms and other financial institutions or corporations (the "receivers"). Petitioner charges fees to both providers and receivers to process and deliver this information publishing service. Sales tax is collected upon fees charged to receivers only.

The messages of providers are communicated to Petitioner in Massachusetts via facsimiles, electronic mail, or, for those providers having such equipment by a 3rd party delivery network. After provider information is received, Petitioner employees index, headline and format the information. In Massachusetts, the information is entered into a third party delivery network by Petitioner employees, processed and from there delivered to receivers through PC terminals owned by the 3rd party delivery network.

Petitioner charges providers a monthly fee of \$625.00 for processing corporate releases. Petitioner charges receivers a monthly fee of 750.00 for receiving releases and other 3rd party information.

Since Corporate Releases are delivered on a third party network Petitioner does not have control over the linking process. Thus, Petitioner could not administratively link providers with receivers.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.-- ... there is hereby imposed and there shall be paid a tax ... upon:

* * *

(c) The receipts from every sale, except for resale of the following services:

(1) The furnishing of information by printed, mimeographed or multigraphed matter 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, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news. (emphasis added)

* * *

(9) The furnishing or provision of an entertainment service or of an information service, which is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature, such as entertainment or information services provided through 800 or 900 numbers or mass announcement services or interactive information network services. Provided, however, that in no event (i) shall the furnishing or provision of an information service be taxed under this paragraph unless it would otherwise be subject to taxation under paragraph one of this subdivision if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner nor (ii) shall the provision of cable television service to customers be taxed under this paragraph.

Section 527.3 of the Sales and Use Tax Regulations provides, in part, as follows:

(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.

(2) The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service.

(3) Among the services which are information services are credit reports, tax or stock market advisory and analysis reports and product and marketing surveys.

Example 1: A company distributes newsletter to its subscribers weekly, showing the range of daily market prices for certain commodities. The newsletter comprises a taxable information service.

Example 2: A company publishes bound volume monthly, which it furnishes to its subscribers. The volume contains information with respect to current advertising rates of various media in different localities. This publication is a taxable information service.

Example 3: A firm which supplies to business concerns listings of prospective customers' telephone numbers is providing a taxable information service and must collect the appropriate tax on the charges for such service.

Example 4: A computer service company owns a service program consisting of analyses of law cases and statutes. It is asked by a customer to research all references to the word "assessment". The fee for the printout received by the customer constitutes a taxable receipt from an information service, as the citations listed may be given to another subscriber requesting the same information.

* * *

(5) Fees for the services of advertising agencies or other persons acting in a representative capacity are excluded from the tax. Advertising services consist of consultation and development of advertising campaigns, and placement of advertisements with the media without the transfer of tangible personal property (emphasis added)

In Morton L. Coren, P.C., Adv Op Comm T&F, June 29, 1990, TSB-A-90(33)S, the Commissioner advised that even though the components of a particular sale could be separately stated, calculated or estimated, that if such components could not be separately purchased the combination of items listed must be considered as one and subject to sales tax as a single purchase.

Accordingly, concerning issue "1", while many of the message formats provided by Petitioner to providers under its TIS service constitute advertising, a service not subject to sales tax pursuant to Section 1105(c)(1) of the Tax Law and Section 527.3 of the Sales and Use Tax Regulations, the particular message formats for "Recap Messages" and "Display Messages" constitute the furnishing of an information service through electronic readout or display, which are subject to sales tax under Section 1105(c)(1) of the Tax Law and Section 527.3 of the Sales and Use Tax Regulations. Pursuant to Morton L. Coren, P.C., *supra*, where components of a particular sale cannot be purchased separately, the combination of items listed must be considered as one and subject to sales tax as a single purchase. Therefore, the entire fee paid by providers to Petitioner for the right to be listed in the Autex computerized information directory is subject to sales tax. It is noted that if the "Recap Messages" and "Display Messages" functions of TIS could be purchased separately from the remaining functions of TIS and vice versa then only the charges for the "Recap Messages" and "Display Messages" functions would be subject to sales tax.

It is further noted that the TIS service provided to receivers through electronic readout or display or written or printed matter, constitutes the furnishing of an information service subject to sales tax pursuant to Section 1105(c)(1) of the Tax Law and Section 527.3 of the Sales and Use Tax Regulations. Therefore, charges to receivers for the receipt of Petitioner's TIS service are subject to sales tax.

With respect to issue "2", pursuant to Section 1105(c)(9) of the Tax Law an information service, which is furnished, provided or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature and would be otherwise taxable under Section 1105(c)(1) of the Tax Law were it furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner would be taxable even if transmitted orally. Therefore since TIS, as discussed in issue "1", would be taxable as an information service when furnished by printed, mimeographed, or multigraphed matter or by duplicating written or printed matter in any other manner, it is also subject to sales tax when transmitted orally.

Concerning issue "3", pursuant to Section 1105(c)(9) of the Tax Law an information service, which is furnished, provided or delivered by means of telephony or telegraph or telephone or telegraph service (whether intrastate or interstate) of whatever nature and would be otherwise taxable under Section 1105(c)(1) of the Tax Law were it furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner would be taxable even if transmitted orally. Accordingly, since the Alert messages would be subject to sales tax as an information service if furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, the transmitting of Alert messages to and from Massachusetts via telephone lines to PC terminals owned by receivers constitutes an information service which is subject to sales tax. Therefore, fees paid to the Alert Division for the transmittal and retrieval of such messages are subject to sales tax.

Concerning issue "4", Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services. The referral of customers to executing brokers is not one of the services enumerated under Section 1105(c) of the Tax Law. Therefore, the premium received from brokers for customer referrals is not subject to sales and use taxes, provided, however, that the premium paid by brokers is not an offset against the charges the brokers are required to pay to have the information service furnished to their customers. First Call Corporation, Adv Op Comm T & F, March 22, 1993, TSB-A-93(20)S.

Regarding issue "5", Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from the sale of the service of the furnishing of information by printed, mimeographed or multigraphed matter but excluding the services of advertising.

The listing and displaying of providers time-sensitive corporate news releases constitutes advertising. Accordingly, the charges to providers for listing and displaying their information is

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exempt from sales tax pursuant to Section 1105(c)(1) of the Tax Law. First Call Corporation, Adv Op Comm T & F, March 22, 1993, TSB-A-93(20)S.

It should be noted, however, that the fee paid by receivers to receive the corporate news releases is subject to sales tax pursuant to Section 1105(c)(1) of the Tax Law as a charge paid to receive an information service.

Moreover, where a provider of such information is also a receiver of such taxable information service, that the charges for advertising through the corporate news releases must be separately stated from the charges for receiving the taxable information service and such services must be able to be purchased separately. Otherwise, the entire charge for such services is subject to sales tax.

DATED: April 12, 1993

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