

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

TSB-A-93 (61) S
Sales Tax
November 29, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S930826B

On August 26, 1993 a Petition for Advisory Opinion was received from Quotron Systems, Inc., 850 Third Avenue, 4th Floor, New York, New York 10043.

The issue raised by Petitioner, Quotron Systems, Inc., is whether the information services provided by Petitioner to its New York subscribers are subject to the sales tax imposed under Section 1105(c)(9) of the Tax Law.

Petitioner provides real-time high-speed delivery of current financial news and information services of various types, including displays of the New York and American Stock Exchange tickers; quotes of the latest sales prices of a security, including its bid, ask, high, low, and volume; earnings forecast and similar information; monitoring of the latest price for selected securities; display of news from various wire services; and other related integrated financial information services to banks, stock brokerage firms, fund managers and institutions investing in financial markets.

In order to provide its financial information services, Petitioner utilizes a highly sophisticated communications network. Petitioner first feeds information obtained from all major financial exchanges and other sources throughout the world (Petitioner does not own any of the financial information transmitted to its subscribers) into its primary data center located in Silver Springs, Maryland. The raw data is analyzed for accuracy and reasonableness and repackaged to provide additional information services which Petitioner makes available to its subscribers, such as statistics (e.g. the relationship of a particular stock price to the highs and lows of the market).

Petitioner transmits the information to its New York subscribers via leased telephone lines that are linked to its central computer facility located in Silver Springs, Maryland. In order for the subscribers to receive the data, Petitioner provides or leases desk units which convert the data from electronic signals to readable form. Each desk unit is able to request and to receive the type of information for which a subscriber has subscribed.

Petitioner's subscriber's do not receive any of the above services aurally.

Petitioner currently collects New York State and local sales taxes on receipts from the sale of information services to its New York subscribers pursuant to Section 1105(c)(1) of the Tax Law.

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,

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(9)(I) 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.

(II) Notwithstanding the rate and date set forth in the opening undesignated paragraph of this section and notwithstanding the opening undesignated paragraph of this subdivision, on and after September first, nineteen hundred ninety-three, in addition to any other tax imposed under this section, and in addition to any other tax or fee imposed under any other provision of law, there is hereby imposed and there shall be paid an additional tax at the rate of five percent upon the receipts which are subject to tax under subparagraph (I) of this paragraph. Such additional tax shall not be imposed by section eleven hundred seven, eleven hundred eight or eleven hundred nine of this article and shall not be included among the taxes authorized to be imposed pursuant to the authority of article twenty-nine of this chapter.

The tax imposed under Section 1105(c)(9)(I) and (II) of the Tax Law applies only to information and entertainment services which are provided, furnished or delivered by telephone and which the customer receives exclusively aurally. The additional five percent tax does not apply to information or entertainment services which involve a written component, such as those provided from computer to computer or computer to written format.

In Quotron Systems, Inc. vs. Gallman 39 NY2d 428 the court concluded that Petitioner was not engaged in the furnishing of telegraph services and thus was not a utility subject to the corporation tax imposed by Section 186-a of Article 9 of the Tax Law. In the instant matter, Petitioner's services continue to be of the same nature as discussed in Quotron Systems, Inc. vs.

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Gallman, supra. In NASDAQ, Inc. Advisory Op, Comm of T&F, August 29, 1989, TSB-A-89(31)S. It was opined that services similar to those provided by Petitioner were subject to the sales tax imposed under Section 1105(c)(1) of the Tax Law.

Accordingly Petitioner is considered to be selling information services which are not personal or individual in nature and thus are subject to the sales tax imposed under Section 1105(c)(1) of the Tax Law. As Petitioner's services are not received aurally by Petitioner's customers, Petitioner's receipts from the sale of information are not subject to the sales tax imposed under Section 1105(c)(9)(I) and (II) of the Tax Law.

DATED: November 29, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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