

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

TSB-A-96 (14)S
Sales Tax
February 28, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S951019A

On October 19, 1995, a Petition for Advisory Opinion was received from Total Recall Message Center, 703-C S. Main Street, Horseheads, New York 14845.

The issue raised by Petitioner, Total Recall Message Center, is whether sales tax is applicable to certain long distance fees charged to clients as part of Petitioner's telephone answering service.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a telephone answering service that provides service to customers throughout New York State and several surrounding states. For each customer with an office located outside of Petitioner's local calling area, Petitioner provides a toll-free number, on Petitioner's telephone trunks, to be used by the customer to forward its business line to Petitioner. The customer is charged an additional fee by Petitioner for any call on the toll-free number and for any long distance call that Petitioner makes back to the customer. Petitioner collects and remits New York State sales tax on these fees but contends that it is basically reselling inbound and outbound long distance telephone service to these customers. Customers that are located within Petitioner's local calling area are not charged the additional fees.

Section 1101(b)(3) of the Tax Law defines "receipt" in part as follows:

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses

Section 1101(b)(13) of the Tax Law defines a telephone answering service as follows:

(13) Telephone answering service. A service that consists of taking messages by telephone and transmitting such messages to the purchaser of the service or at the purchaser's direction, but not including such service if it is merely an incidental element of a different or other service purchased by the customer.

Section 1105(b) of the Tax Law imposes tax upon:

(b) The receipts ... from every sale, other than sales for resale, of telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service and from every sale, other than sales for resale, of a telephone answering service.

Technical Services Bureau Memorandum TSB-M-91(13)S, entitled Telephone Answering Services Subject to Sales Tax Effective September 1, 1991, provides the following guidance as to when the sales tax is imposed upon receipts from telephone answering services.

In general, it is the location for which the telephone answering service is being provided (the customer's business or the customer's personal residence) that will determine whether the service is subject to tax in New York State and the rate (local jurisdiction) at which tax is to be computed.

The rate of tax to charge with respect to telephone answering services is determined as follows:

If telephone answering service is being provided to a business, the physical location (address) of that business determines the tax rate, regardless of the physical location of the phone that is being answered.

Example (1): Mr. Smith, doing business as County Realty, purchases an answering service for calls which would normally ring through the number of the real estate business. Mr. Smith's personal residence is in County A which has a 7 percent tax rate and the answering service is also located in County A; but Mr. Smith's real estate office is located in County B, which has a tax rate of 6 percent. The telephone answering service is required to collect sales tax at 6 percent and report such sale as a sale in County B.

Example (2): A major bank, headquartered in County A, with branches in other counties throughout the state, contracts with a telephone answering service located outside the state to answer a special "800" phone number the bank advertises to receive comments, compliments, or complaints about any of its tellers and service representatives. These messages are then provided to the customer service department located at the headquarters in County A, for processing. Since the telephone answering service is being provided for the service department located in County A, the answering service must add to its charges the combined New York State and local sales tax in effect in county A.

If a telephone answering service is being provided for an individual, the physical location of the individual's personal residence determines the tax rate.

Example (3): Ms. Jones, a nonresident of New York State, purchases an answering service from a service located in New York State. Ms. Jones is frequently away from her home. When Ms. Jones leaves her personal residence (which is located outside New York State), her personal calls are answered by the service in this state. Ms. Jones is made aware of her

TSB-A-96 (14)S
Sales Tax
February 28, 1996

calls through a pager. Virtually all Ms. Jones' personal messages from the service are received by her while she is in New York. The telephone answering service rendered for Ms. Jones' personal residence located outside New York State is not subject to this state's sales tax even though the answering service business providing the service is located in this state, and even though Ms. Jones may receive her messages while she is in New York.

In this case, Petitioner is providing a telephone answering service, as defined in Section 1101(b)(13) of the Tax Law. The receipts from the sale of that service are taxable under Section 1105(b) of the Tax Law. Petitioner is not providing its customers with telephony, telegraphy, or telephone or telegraph services. Accordingly, Petitioner is not reselling long distance telephone services to customers, but is merely incurring long distance expenses in conducting its telephone answering service. These expenses are not deductible in determining taxable receipts. However, as indicated in Technical Services Bureau Memorandum TSB-M-91(13)S, supra, the location for which the telephone answering service is being provided (i.e., the customer's business or the customer's personal residence) determines whether receipts from the sale of the service are subject to tax and the rate at which the tax is to be computed. Thus, where Petitioner provides telephone answering services for locations of customers outside of New York State, no New York sales tax is due on these services.

DATED: February 28, 1996

/s/
DORIS S. BAUMAN
Director
Technical Services Bureau

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