

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

TSB-A-98(34)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO S980327A

On March 27, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Brand Name Sales, Inc., 670 Young Street, Tonawanda, New York 14150. Petitioner, Brand Name Sales, Inc., submitted additional information with respect to the Petition on May 6, 1998.

The issue raised by Petitioner is whether sales of prepaid phone cards are subject to sales tax.

Petitioner submits the following facts as a basis for this advisory opinion.

Petitioner sells prepaid phone cards to the public and inquires as to whether sales tax should be charged on the retail value of the prepaid phone cards. The card is good for a specified number of minutes.

At the time of purchase the customer pays Petitioner a set price. The customer can then use the card at any time (there may be an expiration date on the card). Petitioner is paid for the card at the time of sale to the customer, by cash, check or credit card.

The customer uses the card by following the instructions printed on the card. The customer accesses the telephone carrier by keying in a string of digits which activates the card for the telephone carrier. The customer does not pay any additional money when the card is used.

Applicable Law

Section 1105(b) of the Tax Law imposes sales tax on "[t]he receipts...from every sale, other than sales for resale, of telephony ... and telephone ... service of whatever nature except interstate and international telephony ... and telephone ... service".

Opinion

In Commonwealth Long Distance, Inc., Adv Op Comm T&F, July 29, 1994, TSB-A-94(33)S, one of the issues involved the sale of a debit card priced in advance. The sale price of the card represented a prepayment of the customer's long distance service. The opinion stated that "The customer's initial purchase of the debit card will not be subject to New York State sales tax or use tax. However, whenever the customer makes an intrastate call within New York State the total charge for the call will be subject to the tax imposed under Section 1105(b) of the Tax Law."

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Sales Tax

In accordance with Commonwealth Long Distance, Inc., supra, under current interpretation, sales tax is not imposed on the sale of the prepaid phone cards sold for telecommunications purposes. Under Section 1105(b) of the Tax Law, sales tax will be imposed upon any charge to a customer for making an intrastate call within New York State.

DATED: May 19, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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