

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

TSB-A-98(70)S
Sales Tax
October 7, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980511A

On May 11, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Alfred A. Farella, 201 Sherman Avenue, Hawthorne, N.Y., 10532. Petitioner, Alfred A. Farella, submitted additional information pertaining to the Petition on July 8, 1998 and September 20, 1998.

The issue raised by Petitioner, Alfred A. Farella, is whether services rendered by a business engaged in the collection and compilation of comments and complaints about unsafe driving practices is subject to sales tax.

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

Petitioner's business is engaged in the collection of comments and complaints about unsafe driving practices where the information is gathered for and only released to subscribers. A subscriber to the service is issued a uniquely numbered bumper sticker to place on his or her vehicle or vehicles. The bumper sticker asks other drivers to report unsafe driving practices to a toll-free telephone number. Petitioner has contracted with an out-of-state in-bound marketing service to have live operators take calls from persons who call the toll-free number. The operators ask callers questions from a prepared script. The questions include what the caller wishes to report and where and when the incident took place. At 5:00 p.m. each day, the marketing service sends reports directly to Petitioner via e-mail. Operators do not speak to or correspond with the subscribers, and the subscribers cannot call the operator for a report. Upon receipt of the report from the marketing service, Petitioner reviews and interprets the reported incident. If the incident falls within the bounds of the program (unsafe driving reports), Petitioner will prepare a report for distribution to the subscriber, including driving tips or referrals to local driver safety schools when appropriate. Petitioner distributes the report by fax or e-mail to the subscriber for whatever corrective action he or she might deem appropriate.

Applicable Law and Regulations

Section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from every sale of the following services:

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

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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.

Opinion

Petitioner's business is engaged in the collection of comments and complaints pertaining to unsafe driving practices for its subscribers. Petitioner prepares individualized reports of the driving practices of the persons operating its subscribers' vehicles. These reports are transmitted by fax or e-mail to the respective subscriber.

The service Petitioner provides to its subscribers, as described above, is not subject to sales tax. The tax imposed by Section 1105(b) of the Tax Law on telephone answering services does not apply to Petitioner's service. Although Petitioner's service may include elements of a telephone answering service, telephone answering service is only incidental to the service provided by Petitioner to its subscribers. Petitioner is making sales of personal and individual information to its subscribers. This information is transmitted by fax or e-mail only to the subscriber, and is not incorporated into reports furnished to other persons. Accordingly, the service described in the facts above qualifies for the exclusion from tax under Section 1105(c)(1) of the Tax Law. Petitioner is not required to collect sales tax on its sales of this service.

DATED: October 7, 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.