

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-01(7)S
Sales Tax
January 31, 2001

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000927F

On September 27, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from A.A. Answer Phones, Inc., 1230 Central Avenue, Albany, NY 12205-5316.

The issue raised by Petitioner, A.A. Answer Phones, Inc., is how the rate (local jurisdiction) of sales or compensating use tax charged with respect to its telephone answering service should be determined.

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

Petitioner is a telephone answering service. Petitioner contends that the sales or compensating use tax rate (local jurisdiction) at which tax should be computed on its services should be determined in the same manner in which standard telephone utilities determine their taxing jurisdictions, i.e, based on the location to which the phone company routes a customer's incoming caller's original ring (original ring demarcation).

Petitioner currently provides its services through the following technical means:

1. "Call forwarding" from a local telephone company is the primary means by which Petitioner's telephone answering service is provided. Call forwarding is a mechanical service provided by the telephone company which allows Petitioner's customer to reroute its calls from their original ring demarcation (the customer's business or personal residence) to another telephone of the customer's choice. The taxing jurisdiction in this case, Petitioner contends, is the original ring demarcation address where the caller is directed by the phone company which is the customer's address.
2. "Remote call forwarding" is handled by the mechanics of the telephone company, not the customer, and is permanent. Similar to call forwarding but lacking a ring demarcation, the customer will have its own 800, local, or out-of-area telephone number, but the number rings in no location. The telephone company which owns the number directs the number to a ring demarcation point of the customer's choosing. Petitioner then becomes the original ring demarcation point for the customer's callers. Here, Petitioner contends that it becomes the office of the customer and the taxing jurisdiction is Petitioner's service address because it is the original ring demarcation address where the caller is directed by the phone company.

3. Petitioner gives its business customer a number that is controlled by Petitioner. The customer advertises or distributes such number in the form of business cards, flyers, newspaper/magazine/TV or radio advertising, message machine recordings, verbal communication, etc. The telephone company advertises Petitioner's address as the location of the business advertising this number. Since Petitioner is the original ring demarcation for the callers again in this case, Petitioner contends that it becomes the office of the customer and its service address is the proper taxing jurisdiction as described above in number 2.

Applicable Law and Regulations

Section 1101(b) of the Tax Law states, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(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. . . .

Section 1105(b)(1) of the Tax Law imposes sales tax, in part, on:

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

Section 1110(a) of the Tax Law provides, in part:

Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state . . . except as otherwise exempted under this article . . . (E) of any telephone answering service described in subdivision (b) of section eleven hundred five. . . .

Section 1131(4) of the Tax Law provides:

TSB-A-01(7)S
Sales Tax
January 31, 2001

“Property and services the use of which is subject to tax” shall include . . . (e) all telephone answering service rendered to a person within the state, whether or not such services are performed within the state, the use of which is subject to tax under section eleven hundred ten or will become subject to tax when such service is received by or comes into possession or control of such person within the state. . . . (Emphasis added)

Technical Services Bureau Memorandum TSB-M-91(13)S, dated October 11, 1991, entitled Telephone Answering Services Subject to Sales Tax Effective September 1, 1991, provides, in part:

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. (Emphasis added)

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.

TSB-A-01(7)S
Sales Tax
January 31, 2001

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

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 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.

Opinion

Petitioner is providing a telephone answering service. Section 1105(b) of the Tax Law was amended by Chapter 166 of the Laws of 1991 to specifically add telephone answering services to the enumerated services subject to tax in this section.

As a result of Chapter 166, Laws of 1991, in October 1991, the Department of Taxation and Finance published TSB-M-91(13)S, supra, for purposes of stating its policy as to when sales tax is imposed upon receipts from telephone answering services and how the rate of tax is determined. As indicated in TSB-M-91(13)S, supra, the location for which the telephone answering service is being provided, i.e., the customer's physical business location or physical personal residence location (address) determines whether receipts from the sale of the service are subject to tax and the rate at which the tax is to be computed.

Although Petitioner contends that the tax rate (local jurisdiction) at which tax should be computed on its services should be determined in the same manner in which standard telephone utilities determine their taxing jurisdictions, i.e., original ring demarcation locations, Petitioner is not providing its customers with telephony, telegraphy or telephone or telegraph services (see Marken Properties, Inc., et al., Adv Op Comm T&F, June 26, 1997, TSB-A-97(37)S; Total Recall Message Center, Adv Op Comm T&F, February 28, 1996, TSB-A-96(14)S). Considering the Department's interpretation of the provisions of Section 1105(b) of the Tax Law as embodied in TSB-M-91(13)S, supra, where Petitioner provides telephone answering services for locations of customers in New York State, Petitioner is required to collect sales or compensating use tax at the combined state and local tax rate in effect in the locality of the physical location of the customer's business or personal residence for which its service is being provided. Where Petitioner provides

TSB-A-01(7)S
Sales Tax
January 31, 2001

telephone answering services for locations of customers outside of New York State, no New York sales tax is due on these services (TSB-M-91(13)S, supra; Total Recall Message Center, supra).

DATED: January 31, 2001

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