

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

TSB-A-82(31)S
Sales Tax
September 1, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810923A

On September 23, 1981 a Petition for Advisory Opinion was received from Network Consultants, Inc., 69 Delaware Avenue, Suite 1004, Buffalo, New York 14202.

The issue raised is whether receipts derived from the performance of the services described below are subject to sales tax.

Petitioner currently provides a consulting service to Canadian businesses with respect to their telecommunication needs. Petitioner now plans to offer a new package of services to its Canadian customers. Customers will be allowed to connect their telephone lines to Petitioner's switching equipment in Buffalo in order to make calls from Canada to the United States by means of Petitioner's switch. The reason for routing a customer's calls through Petitioner's switch is to enable Petitioner to monitor and analyze the long distance calling habits of that customer. Based on its analysis, Petitioner will advise a customer as to how to make the most efficient and economical use of that customer's long distance communications facilities. The information provided by Petitioner will be confidential. Petitioner will perform certain of the engineering tasks necessary for the connection of the customer's telephone lines to Petitioner's switching equipment. In addition, Petitioner will monitor customers' telephone lines routed through its switch for signs of service problems. Any service problem detected by Petitioner will be brought to the attention of the telephone company which supplied the line to Petitioner's customer. The telephone company will perform any needed repairs, and will bill Petitioner's customer directly for such repairs. For the package of services described above, Petitioner will charge a flat monthly fee. The size of this fee will depend on the number of telephone lines a customer connects to Petitioner's switch.

Section 1105(b) of the Tax Law imposes a sales tax upon 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."

Section 527.2(d)(2) of the Sales and Use Tax Regulations provides as follows:

"The term 'telephony and telegraphy' includes use or operation of any apparatus for transmission of sound, sound reproduction or coded or other signals."

Section 527.2(d)(5) of the Sales and Use Tax Regulations provides as follows:

"The tax on utility services applies to every charge for any telephone and telegraph service. Among these charges are monthly message rate and intrastate toll charges and charges for special services, such as installation, change of location, conference connections, tie-lines, WATS lines and the furnishing of equipment."

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

"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, . . ."

Section 1105(c)(5) of the Tax Law imposes a tax on the following service:

"Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, . . ."

Section 527.7(a)(1) of the Sales and Use Regulations defines the terms "maintaining, servicing, and repairing" as follows:

"Maintaining, servicing and repairing are terms which are used to cover all activities that relate to keeping real property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition."

Section 527.7(a)(2)(iv) of the Sales and Use Tax Regulations includes within the definition of real property for purposes of section 1105(c)(5) of the Tax Law "Telephone and telegraph lines, wires, poles and appurtenances".

As part of its new package of services, Petitioner will allow its Canadian customers to use its switching equipment as a means of communicating with parties in the United States. Petitioner will, therefore, be providing a telephony service within the meaning of section 1105(b) of the Tax Law. 20 NYCRR 527.2(d)(2). Since the communications made via Petitioner's switching equipment will be between Canada and the United States, the telephony service provided by Petitioner will be international. This service, therefore, will not be subject to tax under section 1105(b) of the Tax Law.

Petitioner will connect its customers' telephone lines to its switching equipment in order to provide the telephony service. In addition, Petitioner will detect and notify the appropriate telephone companies of service problems on its customers' lines in order that they may be remedied. These services, for purposes of the Tax Law, are deemed to be part of the telephony service that will be

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offered by Petitioner. Since the telephony service to be offered is international and not subject to tax, these services, constituting part of such telephony service, will also not be subject to tax.

Petitioner will monitor and analyze the communications made through its switching equipment by its customers. On the basis of these studies, Petitioner will advise its customers with respect to the use of their long distance communications facilities. Any advice furnished to a customer will be confidential and will not be incorporated into reports furnished to others. This consulting service, therefore, is not a taxable information service within the meaning of section 1105(c)(1) of the Tax Law.

DATED: August 13, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau