

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

TSB-A-90(25)S
Sales Tax
May 2, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891227B

On December 27, 1989 a Petition for Advisory Opinion was received from Taft Consulting Corporation, 56 Beaver Street, New York, New York 10004.

The issue raised by Petitioner, Taft Consulting Corporation, is what is a practical method of determining the locality or state in which a telex number is located, so that the applicability of sales tax to the charge for the call can be determined.

Petitioner provides telex and other communications services to clients around the world as a value added reseller. Approximately twenty percent of its gross revenue is derived from message traffic that originates from clients located in New York that is delivered to destinations within the United States and its territories. The only information it has concerning the destination is that the message was delivered to a specific telex number controlled by a specific United States international record carrier (Western Union, RCA, MCI, TRT, etc.)

The telex numbers range from 5 to 10 digits in length and are assigned randomly by the international record carriers. Specifically, there is no information within the telex number that allows determination of the location of the destination.

Petitioner currently handles about 50,000 transactions a month that may be subject to sales tax. These transactions originate with clients located in New York State and terminate at telex numbers known to be located within the United States and its territories.

Section 533.2(b) of the Sales and Use Tax Regulations provides in part as follows:

Sales records. (1) Every person required to collect tax, including every person purchasing or selling tangible personal property for resale must keep records of every sale, amusement charge, charge for dues or occupancy, and all amounts paid, charged or due thereon, and of the tax payable thereon. The records must contain a true copy of each:

- (i) sales slip, invoice, receipt, contract, statement or other memorandum of sale;
- (ii) guest check, hotel guest check, receipt from admissions such as ticket stubs, receipt from dues; and
- (iii) cash register tape and any other original sales document.

Where no written document is given to the customer, the seller shall keep a daily record of all cash and credit sales in a day book or similar book.

(2) The sales record either must provide sufficient detail to independently determine the taxable status of each sale and the amount of tax due and collected thereon or may be substantiated by analysis of supporting records.

* * *

(3) The seller must maintain records which substantiate points of delivery if delivery was made at a place other than his place of business. Such documents should include receipts from parcel delivery services, common carriers, unregulated truckers, the United States Postal Service, foreign freight forwarders, and logs from company vehicles. Such documents must be referenced to specific sales transactions.

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The Department of Taxation and Finance does not generally state specifically what records are to be maintained by individual vendors, only that each individual vendor must keep records which accomplish the objective of providing sufficient detail to determine the taxable status of sales and the amount due and collected on such sales.

The Department has not issued any regulations or audit guidelines setting forth in detail the method of record keeping required by vendors conducting the type of telex business carried on by Petitioner as described above. It is incumbent upon the Petitioner, in the first instance, to submit to the Department a method for determining the sales tax due on the services rendered by it. Upon the receipt of such a proposal, the Department will advise the Petitioner whether the method proposed meets the reporting requirements of Section 533.2(b) of the Sales and Use Tax Regulations.

DATED: May 2, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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