

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

TSB-A-91 (65)S
Sales Tax
October 2, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910620B

On June 20, 1991, a Petition for Advisory Opinion was received from Pro Net, Inc., 600 Data Drive, Suite 100, Plano, Texas 75025.

The issue raised by Petitioner, Pro Net, Inc., is whether charges billed to its customers for "loss protection" against lost pagers is subject to State and local sales and use taxes.

Petitioner provides emergency medical paging services which involve the sale and lease of pagers to doctors and hospitals.

Petitioner currently does not collect sales tax on monthly charges billed to a customer who chooses the optional loss protection. The monthly charge, usually \$1.00 to \$1.50 per pager, protects the customer from having to pay to Petitioner the full value of a pager should it be lost. A customer who loses his or her pager must, however, pay a \$25.00 or \$50.00 deductible fee depending on the type of pager lost.

Monthly invoices do not show the loss protection charge separately. Instead, the annual contract with each customer contains a breakdown of the total per pager monthly fee between access charges, lease charges, maintenance charges, all of which are subject to sales tax, and loss protection charges. The customer retains a copy of the contract and thus is aware of the charges even though they are not separately stated on his monthly invoice.

Section 1132(a) of the Tax Law provides that:

Every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the state.

In Olin Rent-A-Car of New York, Inc., Dec St Tx Comm, April 30, 1976, TSB-H-78(38)S the State Tax Commission held that the amount of the charge by Olin Rent-A-Car of New York, Inc. for collision damage to rental autos attributable to the fault of the renter was an indemnification to the lessor for the loss of use of and the damage to the rented auto as a result of the collision. The charge was not additional rent which would have been subject to retail sales tax as a sale under section 1101(b)(5) of the Tax Law.

In Alamo Rent A Car, Inc., Adv Op Comm T&F, April 15, 1991, TSB-A-91(33)S the Commissioner advised, in part, as follows:

5. Q: Are charges for personal accident insurance paid by the lessee to insure against liability for injuries incurred by lessee or his passengers subject to sales tax?

A: Charges for insurance are not subject to State and local sales and use tax, provided such charges are separately stated on the bill presented to the lessee.

Section 527.1(b) of the Sales and Use Tax Regulations provides that:

When tangible personal property, composed of taxable and exempt items is sold as a single unit, the tax shall be collected on the total price.

Example: A vendor sells a package containing assorted cheeses, a cheese board and knife for \$15. He is required to collect tax on \$15.

Therefore, pursuant to the provisions of Section 1132(a) of the Tax Law and Section 527.1(b) of the Sales and Use Tax Regulations and in accordance with the State Tax Commission decision in Olin Rent-A-Car of New York, Inc., supra, and the Advisory Opinion of the Commissioner of Taxation and Finance in Alamo Rent A Car, Inc., supra, Petitioner's charge to a customer for loss protection against lost pagers is not subject to State and local sales tax provided that the annual contract with the customer provides a breakdown of the monthly fee for the pagers between taxable charges and loss protection charges. The amount of the charge is an indemnification to the lessor for the loss of use of the pager. The charge is not additional rent which would have been subject to retail sales tax as a sale under section 1101(b)(5) of the Tax Law.

DATED: October 2, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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