

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

TSB-A-92 (41) S
Sales Tax
May 15, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920214A

On February 14, 1992, a Petition for Advisory Opinion was received from Jon J. Ward, PO Box 418, Union Springs, New York 13160.

The issue raised by Petitioner, Jon J. Ward, is whether the preparation of reports on an individual's behavioral tendencies based upon information furnished by his customers is an information service which is "personal or individual in nature" within the meaning of the exclusion from tax contained in Section 1105(c)(1) of the Tax Law and, therefore, not subject to sales tax.

Petitioner's business consists of preparing reports on the behavioral tendencies of particular individuals as they apply to sports or business based upon information obtained from a questionnaire completed by its customers. Using Managing For Success software, a prewritten program produced by Target Training International, Ltd., information is entered into Petitioner's computer resulting in a sophisticated behavior analysis on a particular individual to whom the information entered applied. The reports are unique, individual and personal and are then used in a confidential interview to produce performance enhancement. Reports give individuals a computer analysis as to their general characteristics, specific talents, communication ideas, ideal work environment, and areas for personal development.

Section 1105(c)(1) of the Tax Law imposes tax upon:

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, 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.

Section 527.3(b)(2) of the Sales and Use Tax Regulations provides, in part, as follows:

(2) The sales tax does not apply to the receipts from the sale of information which is personal or individual in nature and which is not or may not be substantially incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed such information.

Example 1: The report submitted by a private detective agency to its clients is a personal report, the charge for which is not taxable.

Example 2: Automobile insurance damage appraisals performed for insurance companies are individual reports, the fees for which are not subject to sales tax.

Example 3: A computer service company has a program consisting of withholding tax tables. Using the same program, it computes the payroll for several subscribers. The fee charged to each subscriber is not taxable as it is for an information service, the results of which are not incorporated into reports furnished others.

In New York Life Insurance Co. v. State Tax Commission, 80 AD2d 675, the court held that background character reports prepared by private detective agency concerning applicants for health and life insurance are considered "personal and individual in nature" and, thus, are excluded from sales tax, even if the insurance company receiving such report shares it with other companies and some of the information in the report is used by the company in preparation of subsequent reports concerning the same person.

In contrast, in Towne-Oller and Assoc. v. State Tax Commission, 120 AD2d 874, 504 NYS2d 544, the court held that reports, although tailored to satisfy the information request of the client, were not of a personal or individual character since the reports were created from the same raw data base used in preparation of similar reports to other customers, and that data base was derived from one general source.

Accordingly, pursuant to Section 527.3(b)(2) of the Sales and Use Tax Regulations, New York Life Insurance Co. v. State Tax Commission, supra, and Towne-Oller and Assocs. v. State Tax Commission, supra, reports prepared by Petitioner on the behavioral tendencies of particular individuals, based upon information furnished to Petitioner by his customers, are personal and individual in nature and are excluded from the sales tax imposed by Section 1105(c)(1) of the Tax Law.

DATED: May 15, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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