

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

TSB-A-83(19)S  
Sales Tax  
April 1, 1983

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810910B

On September 10, 1981 a Petition for Advisory Opinion was received from Rich Products Corporation, 1145 Niagara Street, P.O. Box 245, Buffalo, New York 14240.

The issue raised is whether receipts from the purchase of certain reports from Selling Areas Marketing, Inc. (hereinafter "SAMI") by Petitioner are subject to sales tax.

Petitioner states that it is provided by SAMI with reports which track the warehouse movements of goods within designated areas. Documents submitted by Petitioner indicate that SAMI generally "collects its data in a standardized, pre-set method" but that "each client's specific reports are designed individually to meet his own needs." Thus, a report, the contents of which are derived from a common data base, is nonetheless prepared in conformity with a customer's unique needs and interests, as, for example, with regard to such matters as "the area, quantities, measurements, formats and product comparisons."

Section 1105(c)(1) of the Tax Law imposes a tax on receipts from every sale, except for resale, of: "The furnishing of information by printed, mimeographed or multi-graphed 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. . . ."

The collecting, compiling or analyzing information of any kind or nature and the furnishing of reports thereof to other persons constitutes the rendering of an information service. 20 NYCRR 527.3(a)(2). SAMI reports consist of data which has been collected, compiled or analyzed. Therefore, the sale of these reports constitutes the rendering of an information service, within the meaning of the statutory provision set forth above.

The information provided in the reports purchased by Petitioner is prepared in a customized format, according to Petitioner's specifications, and is thus "personal or individual in nature," thereby satisfying the first of the two criteria for exclusion from the operation of section 1105(c)(1) of the Tax Law. Opinion of Counsel, 1965 NYTB-3, p.24; Opinion of Counsel, 1965 NYTB-4, p.48. The second criterion is that the information "is not or may not be substantially incorporated in reports furnished to other persons." Petitioner has failed to cite any extant prohibition against such use of the information by SAMI, whether contractual, statutory or customary. It therefore remains to be determined whether the information "is not" so used. This criterion is satisfied if (a) the information has not previously been so used, and (b) at the time of the rendering of the report in question it could not reasonably have been anticipated that the information would be so used. State Tax Commission

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Declaratory Ruling 79-01, TSB-H-80(97)S; Roger S. Farber, State Tax Commission Advisory Opinion, December 17, 1981, TSB-A-82(3)S; New York Life Insurance Co. v. State Tax Commission, 80 AD 2d 675, aff'd (no op) 55 NY 2d 760 (1982). In the present instance, based on the information and sample reports furnished by Petitioner, it appears that even if the condition set forth in clause (a) in the preceding sentence is satisfied, that in clause (b) is not, for the information would clearly be of interest to others, as for example Petitioner's competitors, and barring any prohibition might well be substantially incorporated in reports furnished to such others.

Accordingly, the receipts from the purchase of such reports as are here described are subject to sales tax, pursuant to section 1105(c)(1) of the Tax Law. It is to be noted that the conclusion expressed herein relates to those reports specified by Petitioner by description and sample. Petitioner is presently under audit, and it is within the context of such audit that the present inquiry has arisen. This Advisory Opinion in no way bars Petitioner from demonstrating on audit that any particular report purchased by it does in fact satisfy the statutory exclusionary provision herein explicated.

DATED: March 16, 1983

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau