

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

TSB-A-89 (24)S
Sales Tax
July 26, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890322B

On March 22, 1989, a Petition for Advisory Opinion was received from Mohawk Valley Listing Service, Inc., P.O. Box 108, Herkimer, New York 13350-0108.

The issue raised is whether certain charges paid by members of the Multiple Listing Service to the Petitioner, Mohawk Valley Listing Service, Inc. is subject to sales and use tax.

The Mohawk Valley Listing Service, Inc., is a New York State Corporation which was organized and incorporated by two Herkimer County brokers for the purpose of facilitating and assisting in the cooperative efforts of all brokers in the area to share listings under a multiple listing service.

To join the Listing Service, it is necessary for the participating brokers to submit a one-time initiation fee of \$200.00. Also, there are annual dues required to be paid by the participating brokers of \$200.00. The Listing Service is not a social organization which has regular social functions, and is purely established for dissemination of information.

The services provided by the Mohawk Valley Listing Service, Inc., are as follows:

1. An initial \$50.00 set-up fee is charged to any new member joining the Service to set up appropriate files for the dissemination of information.
2. For each new listing, \$8.00 is charged for typing listing, taking pictures, copying and distributing to the 16 members of the Service, and a fee of \$7.00 if there is no picture.
3. For any change of status, which is distributed to the members, a fee of \$1.00 is charged.
4. There is an obligation to submit all new listings to the Service within a certain period of time and should there be a late notice of listing, there is a charge of \$3.00 per day to a maximum of \$60.00 and a charge of \$1.00 per day for a late change of status listing to a maximum of \$20.00.
5. Any form provided to members are provided at cost with Sales Tax having been paid to the printer for the printing of the form.
6. Should any member have been suspended from the Service, there is a fee charged of \$25.00 for reinstatement of the member to the Service.
7. There is a \$1.00 fee charged for the dissemination of information to affiliate members, such as appraisers.

8. There is an additional charge if there is an omission of information on the information listing sheet.

The above charges are billed directly to the members of the Service.

Section 1105(f)(2) of the Tax Law imposes a tax upon dues paid to a social or athletic club. Multiple listing services are not considered to be social or athletic clubs.

Section 1105(c)(1) of the Tax Law provides:

(c) The receipts from every sale, except for resale, of the following services:

(1) 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 1101(b)(3) of the Tax Law provides:

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts, but excluding any credit for tangible personal property accepted in part payment and intended for resale and excluding the cost of transportation of tangible personal property sold at retail where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser. For special rules governing computation of receipts, see section eleven hundred eleven.

Section 1101(b)(5) of the Tax Law provides:

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

All of Petitioner's charges including the "initiation fee" and the "annual dues" are for the sale of a taxable information service and therefore are subject to sales tax within the meaning and intent

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of sections 1101(b)(3) and 1105(c)(1) of the Tax Law. (See: Putnam County Multiple Listing Corp. Dec State Tax Comm, July 15, 1983, TSB-H-83(174)S; Rensselaer County Board of Realtors, Inc. Dec State Tax Comm, April 23, 1976.

Charges made by a printer to Petitioner for printing the listing books are sales of either tangible personal property under §1105(a) of the Tax Law or a charge for printing within the scope of §1105(c)(2) of the Tax Law. In either instance, the purchase by Petitioner is a purchase for resale which is exempt from the sales or use tax.

DATED: July 26, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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