

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

TSB-A-91 (10)S  
Sales Tax  
January 17, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900912D

On September 12, 1990, a Petition for Advisory Opinion was received from Independent Oil & Gas Association of New York, 37 Franklin Street, Suite 210, Buffalo, New York 14202.

The issue raised is whether certain fees paid by Petitioner's members for meter maintenance, meter installation, and chart integration services are subject to state and local sales and use taxes.

Petitioner is an association comprised of companies and individuals engaged in the production through mining of oil and natural gas. Petitioner's members rent machinery, purchase mineral leases and also purchase the following services:

1. Meter Maintenance

Petitioner's members do not distribute natural gas to retail users. Rather, they enter into contractual agreements (gas purchase agreements) with a distribution company (hereinafter referred to as "Buyer") to whom they deliver the gas. Petitioner's members also enter into contracts with Buyer's customers (hereinafter "Customers"), whereby Customers purchase gas directly from Petitioner's members at or before the point ("delivery point") at which such gas enters Buyer's transmission pipeline. Buyer is the corporation that actually transmits the natural gas to the retail users (industrial, commercial and residential users). Petitioner's members anticipate that from time to time they will deliver more gas to Buyer's pipeline than is purchased by Customers. Buyer agrees to purchase such excess gas.

Under the gas purchase agreements Petitioner's members are required to deliver the gas to the Buyer's gas pipeline system. In order to accurately measure the amount of gas delivered to Buyer, the gas must be "metered". Pursuant to the gas purchase agreement, Buyer owns the meters which keep track of the amount of gas Petitioner's members deliver to Buyer's pipeline. The gas purchase agreement requires that Petitioner's members provide and maintain parcels of real property upon which the meters will rest. Further, Petitioner's members must agree to pay Buyer a fixed monthly fee "as a measurement, meter maintenance and administrative service charge".

Under the terms of the gas purchase agreement, Buyer maintains title to the meters. However, the meters are placed upon property either owned, leased or controlled by Petitioner's members and it is the responsibility of Petitioner's members to regularly read each meter and forward the information to Buyer.

The title to the gas delivered by Petitioner's members passes at the meter. The amount of gas delivered by Petitioner's members to Buyer may only be measured if it passes through the meter (i.e. it is not possible to measure the amount of gas delivered to the meter unless it passes through the meter).

Although Petitioner's members must pay a fixed monthly fee of \$130.00 fee, the agreement specifies that Buyer is responsible for the calibration, maintenance, adjustment and repair of the meter.

## 2. Meter Installation Fees

Under the gas purchase agreement, Buyer is required to install the meter and related receipt facilities at Petitioner's members' expense. The fee paid for meter installation services is separate from the fixed monthly fee of \$130.00 for measurement, meter maintenance and administrative services.

## 3. Chart Integration Services

Chart integration services are provided to Petitioner's members by third-party contractors.

In addition to the meter located at the point of purchase (specified by the gas purchase agreement), there is a meter located at or near the well's head. These meters measure the pressure of the gas flowing through them in addition to the volume of gas flowing through them. The orifice meters produce "charts" which are continuous recordations of such information. A historical review of the information contained on these charts can be used to produce estimates of the volume of the well production in addition to well performance evaluations.

In order to obtain this information, keep it in historical perspective and analyze it, Petitioner's members purchase chart integration services. Chart integration involves the analysis of each chart produced by an orifice meter. The chart integrator must review existing information and choose various factors to be used in the mathematical formulae which produce volume estimations. For example, the chart integrator must use his or her own judgment to determine the appropriate flow temperature, specific gravity and compressibility factors applicable to a particular well when preparing volume estimates for such well. The critical element to chart integration services is the interpretive ability of the chart integrator. The application of the experience and knowledge of the integrator to the data accumulated by aggregating the information contained on the charts results in an estimation of the amount of gas production from a well. Since the chart integrator's own estimates, interpretation and analyses are critical, two different chart integrators, reviewing the same information will almost always render different conclusions and analyses.

Petitioner submitted a copy of a short brochure from one of the third-party contractors that offer chart integration services to Petitioner's members. As indicated by the brochure, "in order to accurately interpret and integrate orifice charts it [is] not only necessary to have the knowledge of

the natural gas measurement properties and formulas but it [is] also vital to have field experience and awareness." And, "[it] is our chart interpretation ability that we feel is so vital to the measurement process."

The chart integration service providers prepare reports detailing their conclusions. These reports are delivered to the particular member(s) for whom the service is performed and are not provided to anyone other than the member(s) for whom the chart integration services are performed.

Section 1101(b)(5) of the Tax Law states, in part:

Sale, selling or purchase. Any transfer of title or possession or both, . . . rental, lease or license to use or consume, . . . for a consideration or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 526.7 of the Sales and Use Tax Regulations states, in part:

Sale, selling or purchase. [Tax Law, §1101(b)(5)]

(a) Definition.

(1) The words sale, selling or purchase mean any transaction in which there is a transfer of title or possession or both of tangible personal property for a consideration.

(2) Among the transactions included in the words sale, selling or purchase are . . . rentals. . . .

(c) Rentals, leases, licenses to use.

(1) The terms rental. . . refer to all transactions in which there is a transfer of possession of tangible personal property without a transfer of title to the property. . . .

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.--On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax. . . upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

(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. . .

(3) Installing tangible personal property, . . .or maintaining, servicing or repairing tangible personal property. . .

Regulation Section 527.3(b)(2) further explains 1105(c)(1) of the Tax Law as follows:

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. . .

Section 1115 of the Tax Law states, in part:

Exemptions from sales and use taxes.

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten: (12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas. . .for sale by manufacturing, processing. . .refining, mining or extracting. . . . This exemption shall include all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas and solution mining activities to the point of sale to the first commercial purchaser. . . .

Section 1105-B of the Tax Law states, in part:

Reduced tax rates on certain. . .services relating to tangible personal property used or consumed in production.--

(b) Notwithstanding any other provisions of this article, but not for the purposes of the taxes. . .authorized pursuant to the authority of article twenty-nine of this chapter, the taxes imposed by subdivision (c) of section eleven hundred five on receipts from every sale of the services of installing, repairing, maintaining or servicing the tangible personal property described in paragraph twelve of subdivision (a) of section eleven hundred fifteen, including the parts with a useful life of one year

or less tools and supplies described in subdivision (a) of this section, to the extent subject to such tax, shall be paid at the rate of two percent. . .commencing September first, nineteen hundred eighty. . .and such receipts shall be exempt from the tax. . .on and after March first, nineteen hundred eighty-one. . . .

The gas which Petitioner's members sell to Customers and to Buyer, must be identified before title to the gas can pass to the purchaser. In order for identification to occur, it is necessary that the gas passes through the meters at issue for purposes of measuring the amount of gas sold. Since title to the gas does not transfer until after the gas passes through the meter, point of sale is determined to occur "downstream" from the meter.

The provisions of Section 1115(a)(12) of the Tax Law provide an exemption from tax on purchases of equipment which is used in gas production and operation activities to the point of sale to the first commercial purchaser. As the meters at issue are installed and situated on real property provided by Petitioner's members at a location which is within Petitioner's member's pipeline "upstream" or prior to where the gas enters Buyer's transmission facilities, the meters are considered to be associated equipment used in production or operation activities prior to the point of sale to the first commercial purchaser and thus qualify for the exemption provided under Section 1115(a)(12) of the Tax Law, despite being installed by Buyer at Petitioner's members's expense. Accordingly, the entire monthly "meter maintenance" fee of \$130.00 which contractually consists of charges for gas measurement, meter maintenance and administrative services and which Petitioner asserts also consists of a rental charge, is exempt from the statewide sales and use tax under the provisions of Sections 1115(a)(12) and 1105-B(b) of the Tax Law but subject to any applicable local sales or use tax unless such charges are separately stated on the billing presented to Petitioner's members and are reasonable in accordance with current industry rates in which instance only the separately stated charges for meter maintenance will be subject to the applicable local sales tax. Separately stated amounts for gas measurement, administrative services and rental charges will be exempt from state and local sales taxes.

Under the provisions of Section 1105(c)(3) and 1105-B(b) of the Tax Law, any charge to Petitioner by Buyer which represents a fee for installation of the meters will be exempt from the statewide tax but subject to any applicable local sales or use tax.

The chart integration service provided to Petitioner's members by third party contractors is a service which is comprised of collecting and analyzing information concerning Petitioner's members' gas wells and the issuing of reports concerning individual wells to respective member/owners. The sale of such reports in written form constitutes the rendering of an information service within the meaning and intent of Section 1105(c)(1) of the Tax Law.

Since a report supplies information pertaining only to a specific well and as the report is only issued to the member/owner of such well, the report is considered to be uniquely personal and individual in nature, thus satisfying the first condition required for exclusion from taxation pursuant

to Section 1105(c)(1) of the Tax Law.

The second condition for exclusion requires that the information is not or may not be substantially incorporated in reports furnished to other persons. The reports furnished to Petitioner's members meet this criterion in that the information in each individual report is furnished only to the member/owner and is not furnished to other persons.

Therefore, as the reports furnished to Petitioner's members meet the criteria for exclusion required under Section 1105(c)(1) of the Tax Law, such reports constitute a non-taxable information service.

Accordingly, the charges to Petitioner's members for chart integration are considered to be receipts from the sale of a nontaxable information service and are not subject to state or local sales taxes.

DATED: January 17, 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.