

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

TSB-A-96 (16)S
Sales Tax
February 28, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950908A

On September 8, 1995, a Petition for Advisory Opinion was received from Dun & Bradstreet, Inc., 1 Diamond Hill Road, Murray Hill, NJ 07974-1218.

The issue raised by Petitioner, Dun & Bradstreet, Inc., is whether a monthly membership fee charged by Petitioner to its customers who elect a credit sales billing option plan is subject to New York State and local sales and use taxes.

Petitioner submits the following facts. Petitioner is registered in all states to collect and remit sales tax on credit or market information services to the extent the services are subject to tax. Currently, Petitioner's customers pay a set annual amount in advance for a set amount of information units. However, beginning January 1996, Petitioner will be introducing a new billing option.

Under the new option, customers will be allowed to pay for the information units as they use them. Petitioner will charge customers electing this option a \$25.00 monthly fee to recoup administrative costs incurred for billing the customers on a monthly rather than an annual basis. This fee will be separately stated on each monthly invoice.

In addition to the monthly fee, customers would also be subject to a ten percent premium charge, as compared to Petitioner's regular price list, for the actual information units purchased by the customers. Therefore, no discounts will be offered on the information unit prices as a result of electing to be billed on credit purchases.

Section 1101(b)(3) of the Tax Law defines receipt as "[T]he 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" (emphasis added)

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.-- ... there is hereby imposed and there shall be paid a tax ... upon:

* * *

(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 526.5 of the Sales and Use Tax Regulations provides, in part:

Reg. Sec. 526.5 Receipt.--(a) Definition. The word "receipt" means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise. The following subdivisions of this section discuss elements of a receipt.

* * *

(e) Expenses. All expenses, including telephone and telegraph and other service charges, incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts. (emphasis added)

In this case, Petitioner is registered to collect and remit sales tax on receipts from sales of its credit and market information services subject to tax under Section 1105(c)(1) of the Tax Law. Under Section 1101(b)(3) of the Tax Law and Section 526.5(e) of the Sales and Use Tax Regulations, expenses incurred as a result of selling a taxable service are not deductible from the receipts received from the sale of that service. Petitioner is charging the \$25.00 monthly fee to its subscribers to recoup administrative costs incurred for billing the customers on a monthly rather than an annual basis. Since Petitioner is incurring administrative costs as a result of selling its service on an as-used basis, pursuant to Section 1101(b)(3) of the Tax Law and Section 526.5 of the Sales and

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Use Tax Regulations, the monthly charge paid by members to cover these administrative costs constitute receipts paid by the members to receive the taxable service. These receipts are subject to sales and use taxes if taxable services are sold.

DATED: February 28, 1996

/s/
DORIS S. BAUMAN
Director
Technical Services Bureau

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