

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

TSB-A-96 (4)S
Sales Tax
January 25, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950420A

On April 20, 1995, a Petition for Advisory Opinion was received from Kissel-Blake, Inc., 25 Broadway, New York, New York 10004.

The issue raised by the Petitioner, Kissel-Blake, Inc., is whether receipts from its "stock watch service" and "NOMINEX service" are excluded from sales tax under the provisions of Section 1105(c)(1) of the Tax Law. This section of the law excludes 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 from the tax as it applies to information services.

The petition sets forth the following facts.

Petitioner is in the business of providing its clients with information as to the identities of their stockholders. Petitioner's brochure describes its function as follows:

Unfortunately, most corporations lack the know-how and experience to unravel the ever-changing puzzle of corporate ownership, making it virtually impossible to identify accumulation activity on a timely basis. Kissel-Blake has the exceptional ability to act as the corporation's eyes and ears in the financial community while, at the same time, functioning as an early warning mechanism.

Petitioner offers two services to its clients for the purpose of identifying beneficial stockholders, the "stock watch service" and the "NOMINEX service."

"NOMINEX" is a service mark designation for a computer-based system that employs Petitioner's in-house, custom designed programs. "NOMINEX" technology is the heart of Petitioner's ability to identify and quickly reach shareholders and other key decision makers on matters involving takeover defense, tender offers, investor relations and proxy soliciting assignments. "NOMINEX" is the method used by Petitioner to prepare detailed reports on shareholder data. These highly informative documents provide corporate management with comprehensive descriptions of beneficial stockholder bases registered in "street" names. In addition, clients are given records of the names and telephone numbers of those individuals who have the investment and/or voting control over the stock positions detailed in the reports.

Constant vigilance over the movement of stock ownership enables a client to stay prepared in the event of a hostile attempt to take partial or full control of its Board, restructure the company and deal more effectively with shareholder activism. Petitioner's "stock watch service" is an ongoing, two-phase program designed to assist clients by monitoring trading, stock transfer and

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depository ownership activities in clients' common stock and by analyzing data with the objective of identifying stock accumulation at early stages. The "stock watch service" provides hourly monitoring of trading activities and price movements of clients' common stock in the market, daily monitoring of all Securities and Exchange Commission (SEC) filings, weekly monitoring and analysis of broker/bank positions, and analyzing daily trading and quarterly deposit activities. By so monitoring, Petitioner contracts to provide its clients with information as to accumulation of their stock by institutions and other investors.

Petitioner's "NOMINEX service" keeps track of share position levels. It provides current and timely profiles of beneficial shareholders from clients' nominee positions. The shareholder identification effort is initiated by an extensive telephone survey of SEC 13-F filing institutions, bank participants in Cede, Kray, Philadep and other nondepository bank nominees. Remaining unidentified positions are recycled and a second survey is undertaken using the exclusive "NOMINEX" database of corporate and international investment accounts. Following the completion of the two surveys, the clients receive in-depth, confidential reports containing all of the accumulated data and a number of charts highlighting where and how the clients' stock is held.

Petitioner gets its information from many sources, which in turn yields the information desired by clients based upon raw portfolio data provided by clients. Petitioner does not merely print out from a database a client's stockholder list; Petitioner receives a stockholder list from the client then applies what it knows about street names, investigates who is behind various investment accounts, learns who is behind various fiduciary accounts, and provides information to the client as to who holds the client's stock and who is buying it. Information as to clients' stockholders is provided in the reports, and under contract the information cannot be provided to any other customers. The Petitioner, from all kinds of sources and from all kinds of information, culls and gives clients lists of the names behind their stockholder accounts. Petitioner's contracts with its clients are private and confidential, and the very nature of its service is that of service to a particular client for a particular list of stockholders.

Section 1105(c)(1) of the Tax Law imposes tax on receipts from every sale, except a sale for resale, of:

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, and excluding meteorological services.

Section 1105(c)(8) of the Tax Law imposes tax on receipts from every sale, except a sale for resale, of:

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Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

The information that is furnished by Petitioner to clients is private, confidential and unique to each client. The research efforts conducted by Petitioner are tailored in each instance to maintain confidentiality and to meet the unique needs of the client. In the instant case, the "stock watch service" and "NOMINEX service" that are provided by Petitioner are considered to be the furnishing of information which is personal or individual in nature and the information is not or may not be substantially incorporated into reports furnished to other persons. In addition, these services are not protective or detective services within the meaning of Section 1105(c)(8) of the Tax Law. Accordingly, receipts from the sale of these services are not taxable as receipts from the sale of an information service pursuant to Section 1105(c)(1) of the Tax Law or as receipts from the sale of a protective or detective service pursuant to Section 1105(c)(8) of the Tax Law.

DATED: January 25, 1996

/s/
DORIS S. BAUMAN
Director
Technical Services Bureau

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