

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

TSB-H-81 (87) S  
Sales Tax  
April 30, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800814A

On August 13, 1980, a Petition for Advisory Opinion was received from Xerox Corporation, Xerox Square - 867, Rochester, New York 14644.

The issue raised is whether receipts from certain services provided, by one of Petitioner's divisions, to brokers and financial institutions engaged in trading equity securities, bonds and other financial obligations, are subject to the sales and use taxes imposed under Article 28 of the Tax Law.

Autex is a division of Petitioner, based in Wellesley, Massachusetts. It provides services enabling brokers and financial institutions engaged in buying, selling or lending large blocks of securities to communicate interest in such transactions to others on a selective basis through a system of telephone and computer equipment and electronic display screens (with a teleprinter attached in some cases) owned by or leased to Autex. Autex provides the following three services:

1. In one of its operations Autex transmits messages between subscribers. Autex transmits messages only to those subscribers who have been designated to receive them by the subscriber sending the messages. Subscribers may want to inform other subscribers of their plans to buy, sell or lend large blocks of equity securities or bonds. Other matters with respect to the trading of bonds and securities, including announcements of new issues, syndication allotments, delivery instructions, and trade confirmations on a subscriber's standard form may also be communicated. In addition, any subscriber can have announced to all other subscribers any trade which the subscriber wishes to have so announced. The messages and instructions of New York subscribers are communicated to Autex in Massachusetts via interstate telephone lines leased by Autex from the telephone company. Such communication may be made orally to Autex by telephone or, for those subscribers having such equipment, by means of a computer terminal supplied by Autex, to be used exclusively in connection with services provided by Autex. In Massachusetts, the information is entered in Autex's computer and from there transmitted via telephone lines leased by Autex to the display or teleprinter terminal supplied by Autex in the office of the subscriber or subscribers to whom Autex has been directed to transmit the message, or, if a subscriber does not have such equipment, orally, by telephone. As requested, Autex will provide a subscriber with a recapitulation of the current (and recently cancelled) communications which Autex has received for delivery from or to such subscriber, organized in accordance with the subscriber's request.
2. Pursuant to a contract with Fundamental Brokers, Incorporated (F.B.I.), Autex delivers offers on government securities from F.B.I. to F.B.I. customers through the use of computers, interstate telephone facilities and electronic display screens. F.B.I. determines both the terms of the offer and the customer or customers to whom the offer is to be communicated by Autex.

---

JAMES H. TULLY, JR., COMMISSIONER    LOUIS M. JACOBSON, DEPUTY COMMISSIONER  
FRANK J. PUCCIA, DIRECTOR

3. Autex provides an internal communication system, termed the Information Retrieval Service, for a few large brokerage firms. Subscribers to the service feed information into Autex's computer located in Massachusetts by means of terminal equipment in their offices and interstate telephone lines leased by Autex. The information involved relates to a brokerage firm's holdings, trading history, research recommendations, investment positions and its customers' interests. The purpose of this service is to allow brokerage firms to provide their branch offices with timely information concerning block trading transactions. Autex's computer distributes information only in accordance with a subscriber's instructions and the service is used by firms for the sole purpose of transmitting data to their branch offices.

The first service described above comes within the ambit of the terms of section 1105(b) of the Tax Law, which imposes a tax on "The receipts from every sale, other than sales for resale...of telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service." This view is supported by New York Quotation Company v. Bragalini, 7A.D. 2d 586. In that case the Petitioner provided its customers with stock market information transmitted to it by the New York Stock Exchange. The court there held that the service constituted not an information service, as was contended by the Petitioner, but telegraphy. The court utilized a definition of telegraph service set forth in Holmes Electric Protective Co. v. McGoldrick, 262 App. Div. 514, aff'd no op 288 N.Y. 635, as a service consisting "...essentially in the mere transmission of communications, the service of the telegraph company being completed when the message has been transmitted." Id. at 517. The court went on to state, in New York Quotation, that "Telegraph service in the ordinary sense envisions a sender, a transmitter, and a receiver, with the sender delivering a message to the transmitter for transmission. Normally the sender purchases the transmission service. Here the receiver purchases the service. This difference does not change the nature of the service involved." Id. at 589.

In the present case, of course, the customer may be both sender and receiver, in different instances. A similar definition, similarly applicable in the present instance, appears in Quotron Systems, Inc. v. Gallman, 39 N.Y. 2d 428, wherein the court stated that, "It is common knowledge that a telegraph company normally functions as a mere conduit, transmitting to third-party recipients messages given it by various originators." Id. at 432. While the the New York Quotation and Quotron decisions dealt with the tax on utilities imposed under section 186-a of the Tax Law, and not with the sales tax imposed under section 1105(b) of the Tax Law, the determinative issue in such cases, as defined by the court, "was whether the taxpayer was engaged in the sale of telegraphy or the furnishing of telegraph service." N.Y. State Cable Tel. Ass'n v. State Tax Com'n, 59A.D. 2d 81, 84. This case demonstrates the applicability of the New York Quotation and Quotron opinions to section 1105(b) of the Tax Law. It should be noted that the incidental service of providing its customers with a recapitulation of current and recently cancelled communications in no way warrants a conclusion contrary to that arrived at herein.

Finally, while it is here determined that the service in question comes within the rubric of "telephony and telegraphy and telephone and telegraph service of whatever nature," within the meaning and intent of section 11105(b) of the Tax Law, the tax imposed thereby is explicitly rendered inapplicable to "interstate and international telephony and telegraphy and telephone and telegraph service." Therefore, the tax would apply only to receipts attributable to communications between customers both of whom are located in New York.

TSB-H-81(87)S  
Sales Tax  
April 30, 1981

The foregoing considerations are equally applicable to the second service described above, and lead to identical conclusions.

The third service described above, the Information Retrieval Service, also involves the transmission of messages, and thus comes within the category of "telephony and telegraphy and telephone and telegraph service of whatever nature." This conclusion is mandated by a consideration of the fact that Autex acts as a conduit of messages between a customer and the branch offices of such customer. Accordingly, the considerations controlling with respect to the first two services described above are equally applicable hereto, and lead to identical conclusions.

DATED: April 15, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau