

STATE OF NEW YORK  
DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
TRANS UNION CREDIT :  
INFORMATION CO. :  
for Revision of a Determination or for Refund :  
of Sales and Use Taxes under Articles 28 and 29 :  
of the Tax Law for the Period September 1, 1981 :  
through August 31, 1982. :  
: DETERMINATION

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In the Matter of the Petition :  
of :  
TRANS UNION CREDIT :  
INFORMATION CO. :  
for Revision of a Determination or for Refund :  
of Sales and Use Taxes under Articles 28 and 29 :  
of the Tax Law for the Period June 1, 1982 :  
through May 31, 1984. :

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Petitioner, Trans Union Credit Information Co., 111 West Jackson Boulevard, Chicago, Illinois 60604, filed petitions for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods September 1, 1981 through August 31, 1982 and June 1, 1982 through May 31, 1984 (File Nos. 806330 and 806331).

A hearing was held before Catherine M. Bennett, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on July 17, 1990 at 9:15 A.M., with all briefs submitted by November 5, 1990. Petitioner appeared by Denise A. Darcy, Esq. The Division of Taxation appeared by William F. Collins, Esq. (Michael B. Infantino, Esq., of counsel).

## ISSUE

Whether the Division of Taxation properly determined that SNAP reports constitute a credit rating and reporting service taxable under the Administrative Code of the City of New York former § BB46-2.0(a)(1).

## FINDINGS OF FACT

On June 20, 1987, the Division of Taxation ("Division") issued to petitioner, Trans Union Credit Information Co. ("Trans Union"), two notices of determination and demands for payment of sales and use taxes due for the period September 1, 1981 through August 31, 1982 assessing tax due of \$38,221.64, plus interest of \$28,834.21,<sup>1</sup> for a total amount due of \$62,055.65, and for the period June 1, 1982 through May 31, 1984 assessing tax due of \$87,308.22, plus interest of \$34,335.01, for a total amount due of \$121,643.23.<sup>2</sup>

On January 21, 1988, a conciliation conference was held with respect to the matter at issue. The resulting conciliation orders dated August 26, 1988 determined tax due for the period September 1, 1981 through August 31, 1982 in the amount of \$18,531.71, and for the period June 1, 1982 through May 31, 1984 in the amount of \$42,331.25. Minimum interest was also assessed. At the conciliation conference an agreement was reached by the parties that the SNAP system is not taxable pursuant to Tax Law § 1105(c)(1).

Numerous consents to extend the statute of limitations were authorized by the vice-president/controller of Trans Union. The statute of limitations for the assessment of sales and use taxes due was ultimately extended for the taxable period September 1, 1981 through

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<sup>1</sup>The total of interest amounts listed in the body of the notice is \$23,834.01. This discrepancy is not significant since a further revision is made (see Finding of Fact "4").

<sup>2</sup>The parties indicated on the record that the handwritten numbers on the notice represent the assessment separate and aside from any further reduction pursuant to conciliation conference or post-hearing adjustments.

July 31, 1982 for determination any time on or before June 20, 1987.

Post-hearing, the amounts asserted for all periods in question were reduced as a result of testimony given during the hearing by a representative of Federated Department Stores, Inc. and Bloomingdale's, now a separate subsidiary having been previously a division of Federated. Bloomingdale's had been previously audited and was the vendee of SNAP services provided by petitioner. Since Bloomingdale's was issued an assessment in part for such services in periods which overlap with those in issue in the instant matter, a further reduction in the assessment asserted against petitioner in the amount of \$23,498.56 was computed after the hearing. The amount in controversy remains for all periods at \$37,364.40, plus minimum interest.

Testimony was given by Walter Abrams, vice-president and general manager of Trans Union Credit Company, which is a division of Trans Union. Mr. Abrams described the business of Trans Union as a credit reporting business. He explained that Trans Union has a data base which is made up of consumer information obtained from subscribers. The information includes accounts payable from banks, retailers, financial companies and any other sources available to compile information on individuals with a credit rating. Trans Union sells credit reports upon inquiries by companies providing certain demographic information. A billing function is implemented on an individual request basis.

He further testified that Trans Union does not determine the credit worthiness of any consumer and does not involve itself in the decision- making process as to the extension of credit. It does not make any recommendations, but merely supplies information from its data base.

SNAP services, the taxability of which is the subject of this hearing, refers to "system for new accounts processing". Mr. Abrams indicated by his testimony that SNAP was provided as an accommodation to Bloomingdale's and Macy's, who were both customers of Trans Union. Mr. Abrams described the SNAP process as an application processing function. Trans Union's clerical personnel would input information from a credit application into the computer system. Fair Issacs Corporation, a California company, provided the hardware and software that enabled

a scoring process to take place based on the demographic information provided by the consumer to either Macy's or Bloomingdale's. Based on criteria provided by Macy's or Bloomingdale's separately, the system would determine whether or not there were enough points to go on to the next step in the credit extension process. If there were not enough points to go on further, the system would generate a decline letter for that consumer. If there were enough points, the system would automatically require the purchasing of a credit report.

After being provided with the SNAP service, Bloomingdale's and Macy's would predominantly purchase credit reports from Trans Union, provided the consumer had reached an initial scoring of a certain level. If Trans Union was unable to provide the credit report due to some insufficiency in its data base, other bureaus such as CDCBI, TRW and Chilton were consulted. In the event a credit report was purchased, Trans Union would process an automatic bill, charging sales tax on this service.

If the credit report was being processed, the system would then take the scores from the initial input and the score from the bureau report and such combination would result in a determination as to credit worthiness. Trans Union, however, had no part in the design of the system. Petitioner was unaware of what went into the determination of credit worthiness since that was considered proprietary information of Bloomingdale's and Macy's.

The billing which took place for the SNAP service was considered payment for the clerical function of data entry and, in small part, to subsidize the cost of depreciation of the program.

As explained by the testimony of Mr. Abrams, many large institutions have a scoring system similar to SNAP for two important reasons, one of which pertains to the high cost of personnel needed to determine credit worthiness. The use of a system like SNAP organizes the data so that a customer such as Macy's is able to preliminarily assess a score and automatically weed out many applications. In addition, the scoring system seems to be a more accurate way to first approach an application since it is merely statistical, and human emotion is nonexistent at this level.

The Division of Taxation accepts without dispute a description of SNAP as provided by Trans Union's general accounting manager, Ned Moser, in January 15, 1987 correspondence to Keloo Wadhvani, a tax auditor of the New York State Department of Taxation and Finance.

The description was as follows:

"Consumer credit applications received by Bloomingdale's/Macy's are forwarded to Trans Union's office for processing and scoring so that action on the application can be taken. Trans Union's [sic] scores the applications according to parameters provided by Bloomingdale's/Macy's and obtains credit reports when necessary, either from its own system or from another credit bureau. The credit reports are then provided to Bloomingdale's/Macy's with specific charges on which a sales tax is accessed [sic], and credit decisions are made by Bloomingdale's/Macy's based on the scores.

Approved applications are entered into the 'Snap' system so that a computer tape is produced, which will be used to generate credit cards that are mailed to consumers. Another tape is produced from which reject letters are generated declining the credit application.

The service performed is charged to Bloomingdale's/Macy's on a per application processed basis. The service is not part of Trans Union's standard credit reporting service and has no value to any other customer since Bloomingdale's/Macy's (each independent of one another) specific criteria is used in scoring applications, and since Bloomingdale's/Macy's credit cards or decline letters are generated. Accordingly, the services are individual and personalized to Bloomingdale's and to Macy's and not incorporated in any reports furnished to other persons. The credit reports that are standard are charged separately with a sales tax accessed [sic]."

#### SUMMARY OF THE PARTIES' POSITIONS

Petitioner asserts that SNAP is not a credit rating or credit reporting service subject to the 4% tax under Administrative Code of the City of New York former § BB46-2.0(a)(1), but that in fact it is a credit application processing service provided by Trans Union to Macy's and Bloomingdale's. Trans Union did not make the final determination as to the extension of credit to an individual applicant nor determine the credit worthiness of credit applicants and, as a result of the function so provided, could not have "rated" any applicant for the purpose of making a decision regarding credit. The billing for the SNAP service was to compensate Trans Union for the overhead of the data entry personnel and the depreciation of the Fair Issacs equipment. Since SNAP was in the nature of application processing and data entry, it does not rise to the level of credit rating or credit reporting as asserted by the Division of Taxation.

The position taken by the Division of Taxation is that petitioner is grading or rating the

credit applications provided to it by making the decision to purchase a full credit report. The Division asserts that it is immaterial that petitioner does not establish the criteria for rating such applications or making the final determination as to which application should be approved or rejected. The Division points to declaratory ruling 79-01 (TSB-H-80[97]S) which will be discussed in the Conclusions of Law, infra. The Division asserts that petitioner has not met the burden of proving by clear and convincing evidence that it was not performing the service of credit rating.

### CONCLUSIONS OF LAW

A. The Administrative Code of the City of New York former § BB46-2.0(a)(1) provided that a tax at the rate of 4% shall be charged on the following services:

"Credit rating and credit reporting services, including, but not limited to, those services provided by mercantile and consumer credit rating or reporting bureaus or agencies, whether rendered in written or oral form or in any other manner, except to the extent otherwise taxable under article twenty-eight of the tax law."

The issue in this case is whether the SNAP services performed by petitioner amount to credit rating or credit reporting services pursuant to this section of the law.

B. The terms "credit rating" or "credit reporting" services are not defined by law.

However, some guidance is provided by the Fair Credit Reporting Act, Article 25 of the New York General Business Law. There, a consumer reporting agency is defined as:

"any person who, for monetary fees...regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports or investigative consumer reports to third parties." (General Business Law § 380-a[e].)

In pertinent part, General Business Law § 380-a(c)(1) defines "consumer report" as:

"any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or part for the purpose of serving as a factor in establishing the consumer's eligibility for (i) credit or insurance to be used primarily for personal, family, or household purposes...."

One could certainly assume that a consumer report, as previously defined, is synonymous with what is commonly referred to as a credit report and is the result of the services of credit

reporting. The key elements in the credit reporting services weigh worthiness, standing, capacity and reputation in making a final determination regarding the extension of credit. Credit rating, however, seems to indicate a slightly different process, a process which involves fact finding, data gathering, analysis and evaluation. To perform a credit rating, it would seem that one would be required to perform services that go far beyond data entry and application processing on the basis of mere demographics. In addition, it would appear that the services of credit rating would take into account historical performance as well as present circumstances.

C. The Division of Taxation raises in its favor Declaratory Ruling 79-01 (TSB-H-80[97]S). The ruling was to determine whether former section BB46-2.0(a)(1) of the Administrative Code of the City of New York should impose sales tax on receipts of a certain service. Petitioner in that case described a service that it provided to customers which consisted of obtaining information concerning the credit of individuals or businesses named by the customer. A customer seeking information would contact petitioner and describe the purpose for which he needed information and selected types of inquiries that would elicit such information. In response to inquiries concerning credit worthiness of the subject of the request, a written or oral reply would be furnished to the customer summarizing the inquiries. Petitioner in that case obtained its information from sources such as informants, banks and other persons who might have information concerning the subject of the inquiry. The information furnished to the customer was said to be general in nature and not specific, but concerned such things as bank balances, past and outstanding loans, financial status, and informant's opinion of the subject. Petitioner in that case did not compile or analyze the information, but forwarded the information obtained without any personal comment or rating of the subject. The former State Tax Commission held in that case that the services provided were not taxable under Tax Law § 1105(c)(1) since they fell within the exclusion for receipts from sales of information services which are for resale. However, the State Tax Commission held that, with respect to former section BB46-2.0 of the Administrative Code of the City of New York, since that section did not provide an exclusion for an information service held for resale, it must be taxed as a credit

rating or credit reporting service or, in the alternative, as a detective service under another provision of the Administrative Code.

The services provided by the petitioner in Declaratory Ruling 79-01 more closely resemble the services performed by Trans Union when it provides a credit report from its data base of information to a customer seeking to perform a credit analysis. The SNAP system did not summarize inquiries by the customer, nor provide personal or financial information to the customer directly connected to rating or evaluating credit worthiness. Declaratory Ruling 79-01 is thus not dispositive of this matter.

D. In review of the services performed in the SNAP function, had such services been performed by a company other than one engaged in the business of credit reporting, the service would clearly have been viewed as nothing more than a data processing function. The fact that it is a separate service provided to select customers by a company engaged otherwise in the business of credit reporting must not change that conclusion. The SNAP service did not evaluate or analyze consumer information with respect to credit worthiness or eligibility. It provided a method to preliminarily weed out applications without an eye to some of the most important elements necessary to determine credit extension. Petitioner has sustained its burden in proving that the services provided under SNAP were not "credit rating" or "credit reporting" services.

E. The petitions of Trans Union Credit Information Co. are granted and the notices of determination and demands for payment of sales and use taxes due issued June 20, 1987, and thereafter revised pursuant to Findings of Fact "2" and "4", are hereby cancelled in their entirety.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE