

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-14(3)S
Sales Tax
January 27, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120313A

The Department of Taxation and Finance received a Petition for Advisory Opinion from Petitioner [REDACTED]. Petitioner asks whether its [REDACTED] product ("Product X") is subject to sales and use tax. We conclude that Product X is subject to sales and use tax as an information service.

Facts

Product X provides financial professionals with single sign-on access to premium content that they have purchased from third-parties and would otherwise have to access via multiple password-protected websites.

Petitioner currently provides Product X to banks and other third party content and data providers (collectively "Providers"). Providers pay fees to Petitioner in exchange for allowing their own authorized clients ("Clients") to use the product. Clients do not pay a fee for their use of the product. Typically, a Client will be an authorized client of more than one Provider because Product X provides little benefit unless a Client has access to more than one Provider website. A key feature of Product X from the standpoint of the Clients is the ability for users to access multiple website portals with a single set of log-on credentials. The product also provides aggregated search and display of content that is accessible via the websites of the various Providers. Clients are typically investors who have an investing relationship with multiple Provider banks or broker-dealers and are entitled to access each Provider's website for research and other investment-related information. Product X simplifies the process whereby Clients can log into the Providers' websites by exchanging the various access credentials provided for each website for a single Product X ID that provides direct access to Provider websites and the ability to navigate among the various Provider websites.

In connection with providing this product, Petitioner maintains a list of Clients who are authorized by the various Providers to use the product, including both those who have enrolled and those who have not enrolled. It also maintains data from each Provider on each Provider's Clients' entitlement to that Provider's content. This includes Clients who have been authorized to use the product by, and are entitled to receive content from, multiple Providers. Once they have received their log-in credentials, Clients can obtain similar functionality via logging in either to the Product X website or to one of their Providers' websites using the Client name and password provided by Petitioner. Petitioner effectuates this single sign-on capability through the use of an authentication token (called a CURL) that is an encrypted "url" that instructs the Provider's website to directly connect the client to the website without need for additional log-in

credentials. The CURL limits a specific Client's access to only the pages on each Provider's website to which the Client is entitled. In connection with the CURL, Petitioner does not transfer any software to the Provider; rather, it merely provides the Provider with the specifications to which the CURL will have to conform for Petitioner's service to work.

A Client may also gain access to a Provider's content by entering the Product X credential information at Petitioner's website. Upon accessing the website, a Client will see headlines or titles of reports or other research recently made available by the Provider to which that Client is entitled, along with the name of the author, and the industry sector classification discussed by the research or report. Next to the report/research will be a link that will take the Client to the Provider's website where a complete version of the research or report is available. On the left side of the page the Client will see a "banner," which is a series of icons, one for each Provider that has granted the Client access to its research. The Client is able to access the website of any of the Providers with an icon on that banner by clicking its icon. Petitioner's website provides a Client with additional functionality around the content. The Client has the ability to filter and sort Provider content by topic and author based on tags provided by the Providers or by certain Product X taxonomy. The Client is able to do full-text searches on Petitioner's site across the content supplied by the Providers to which the Client has access. Clients can store frequently used searches. If a search retrieves research that is of interest to the Client, a link will bring the Client to the website of the Provider that did the research via the CURL. The website identifies the "most read" articles and also provides Clients with access to a limited directory of clients.

In the past, Petitioner licensed search capability software from an unrelated third party and paid sales tax thereon, but now it uses search software that it has developed. The license fee it formerly paid for the search capability software represents a small fraction of the overall cost of providing Product X.

Under Petitioner's agreement with Providers, the Providers grant Petitioner a royalty-free license to certain use of the Providers' content solely for purpose of providing Product X, including the search capability. Petitioner grants the Providers a license to use the Product X technology, including software, *solely* for the purpose of transmitting the Provider's content and Client information to Petitioner in connection with the product. For no additional charge, Petitioner gives Providers data on Clients' use of their websites, including anonymous use rankings comparing use of a given Provider's website with use of other Providers' websites. Petitioner only provides this data as part of Product X.

Petitioner's management of Providers' log-in process relieves Providers of the need to handle the identification authentication process themselves, which entails either dedicating staff time to the process (e.g., to assist customers with forgotten passwords), or maintaining software to handle that function, or both.

Analysis

The Tax Law imposes sales and use tax on retail sales of tangible personal property and certain enumerated services, including information services (Tax Law § 1105[a], [c][1]). Services are to be taxed according to their primary function (*see Matter of SSOV '81 Ltd.*, Tax Appeals Tribunal, January 19, 1995). Section 525.2 (a)(3) of the Sales and Use Tax Regulations provides that the sales tax is a “destination tax,” meaning that “[t]he point of delivery or point at which possession is transferred by the vendor to the purchaser, or the purchaser's designee, controls both the tax incidence and the tax rate.”

One of Product X’s functions is to manage the process of authenticating the identity of those persons seeking to access Providers’ research, which Petitioner does through its single sign-on technology. Product X goes well beyond performing this function, however. In a nutshell, Product X allows Providers -- research providers -- to give Clients -- the Providers’ customers -- a way to efficiently and conveniently access investment research coming from multiple Providers. Product X does this chiefly by consolidating the research of the Clients’ various information services providers so that those Clients can view the investment information through a customer interface and a single sign-on. If the Client goes to Petitioner’s website, the Client will see headlines of recently published research of all those Providers whose information the Client has a right to access with links that take the Client to the website of the Provider that published the report. Alternatively, if the Client opts to access the website of a Provider, the Client sees a ribbon that has links to any of the other Providers to which the Client has access and that subscribe to Petitioner’s service. This function of aggregating information is the quintessence of an information service (Sales Tax Reg. § 528.3[a][2][“The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service”]; Sales Tax Reg. § 528.3[b][2][Example 3][newspaper clipping services are taxable as information services]). Further proof that Product X’s primary function is to act as an information consolidator are the additional software tools that Petitioner makes available to allow the Clients to more efficiently use the information accessed through Product X. For example, Product X provides Clients with a search engine that allows Clients to search across the content of all the Providers that subscribe to Petitioner’s service and to which the Client has access. Also, Product X allows Clients to save any relevant content or their searches for later use and to organize the saved items.

The facts here are distinguishable from the facts in *Finserv Computer Corp. v. Tully* (94 A.D.2d 197, 200 [3d Dept 1983], *affd* 61 NY2d 947 [1984]). In that case, the court held that a service that transferred the computerized records of its customers onto microfiche or microfilm was not an information service because it did not give back to the customer any additional intelligence. Here, the information made accessible to the Clients through Product X is not in their possession prior to Petitioner’s performing its aggregation function; rather, Petitioner has found a way to route it to them that consolidates the multiple information streams to which the Client has a right, in order to allow Clients to efficiently access, save, and organize that information.

Accordingly, based on the facts presented, the sales of Product X are subject to sales and use tax as the sale of a taxable information service to the Providers and delivered to the Providers' designees, their Clients. To the extent that Petitioner's customers, the Providers, can show that their designees for the receipt of Petitioner's service, the Providers' Clients, are accessing the service from outside New York, Petitioner need not collect sales tax on the receipts from such sales (*see* TSB-A-03][5]S).

DATED: January 27, 2014

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.