

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

TSB-A-12(1)C  
Corporation Tax  
TSB-A-12(2)S  
Sales Tax  
February 9, 2012

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. Z110517B

The Department of Taxation and Finance received a Petition for Advisory Opinion from Petitioner, [REDACTED]. Petitioner asks whether its payment processing service is subject to sales and use tax and whether performance of the service in New York would give nexus to the merchants who receive payment from their customers through the service for purposes of sales and use tax and corporation tax. We conclude that Petitioner's service, as described herein, is not subject to sales and use tax. We also conclude that merchants, by the mere act of receiving payment from their customers through that service, do not qualify as vendors required to collect sales and use tax and are not considered to be doing business for purposes of Article 9-A of the Tax Law.

**Facts**

*1. Background*

Petitioner is a Delaware corporation headquartered in [REDACTED], California. It has no offices, employees, real or personal property located in New York. Petitioner is a provider of an innovative cash payment processing service, which shall be referred to as Service X. This service, which launched in September 2010, enables businesses and consumers ("Users") to purchase goods and services online, from catalogs, or from direct response companies, and to pay for those items at a local retail store using cash. In addition, the Service will enable users to pay bills or loan balances to their creditors at a local retail store using cash.

Petitioner's primary target users are the un-banked (*i.e.*, persons without an account at a bank, savings and loan, credit union or other financial institutions), the under-banked (*i.e.*, persons that may have a checking or savings account but rely on alternative financial services such as non-bank money orders, non-bank check-cashing services, payday loans, etc.), or those individuals who simply prefer to pay for purchases with cash. By offering Service X, which is described in detail below, Petitioner enhances purchasing power and allows participating Merchants to reach new customers.

*2. Service X*

The basic structure of Service X is as follows: First, Petitioner enters into agreements with participating merchants, billers, and creditors ("merchants") that wish to allow their own customers the option of paying for their obligations, goods and services through the use of Service X. Second, Petitioner enters into agreements with participating retail stores ("Retailers"), such as Convenience Store Chain X, that agree to accept payments from the

merchants' customers at their "brick and mortar" stores and, in exchange for a commission, to pass those payments along to Petitioner.<sup>1</sup> Third, Petitioner provides terms of use for Users who may register with Petitioner at its website or through participating merchants. This requires the user to provide a username, a password, and an email address. The email address may be confirmed by Petitioner during registration.

If a User who has registered with Petitioner wants to make a purchase from a participating merchant, at the "check-out" stage of the purchase process, the User is presented, along with more traditional payment options (*i.e.*, credit card, debit card, check by mail, PayPal), with the option to pay via Service X. Once again, the advantage of Service X is simply this: It enables an un-banked or under-banked User to make an online or telephone purchase from a merchant without the necessity of having to have a credit card, a debit card, or a checking account.<sup>2</sup> Rather, the User can, after placing the order, then go to the nearest Convenience Store X and make payment there.

Once a User elects to pay a merchant ("Merchant") using Service X, the User has several methods by which he or she may complete the transaction:

- Service X Slip: If the User has access to a printer, the User may print a paper transaction statement containing a unique transaction barcode, which is readable by the Retailer's Point of Sale ("P.O.S.") system (a "Service X Slip").
- Service X Card: If the User does NOT have access to a printer, or simply prefers this method, the User may provide Petitioner with her mobile telephone number in order to receive a reply text message from Petitioner advising user how to go to the nearest Retailer (*i.e.*, Convenience Store X) and to pick up, for free, a Service X Card previously provided to the Retailer. On the back of the Service X Card is a PIN that the User must then transmit to Petitioner by reply text message. Then, the User presents that Card along with cash payment to the Retailer's cashier. The cashier swipes the Service X Card, which is read by the Retailer's P.O.S. system.
- Service X Mobile Image: Alternatively, the User may download a facsimile rendering of the transaction statement containing a unique transaction barcode to his or her smart phone, the image of which will be readable by the Retailer's P.O.S. system (a "Service X Mobile Image"). This functionality is expected to be operational at some point in the future.

---

<sup>1</sup> Currently, Petitioner has associated with Convenience Store Chain X. In the future, Petitioner may use other national or regional retail chains.

<sup>2</sup> If a Consumer wished to pay by credit or debit card, the Consumer would present the card as an assurance of payment and the Merchant would proceed to process the transaction. Service X is similar, except Petitioner does not extend credit; rather it facilitates cash payments.

Having elected to pay Merchant by Service X through a Service X Slip, Card, or Mobile Image, the User has essentially “queued up” the transaction and must then proceed to a local Retailer (*i.e.*, Convenience Store Chain X) to remit payment. Put another way, Merchant has essentially “suspended” the transaction until payment is received (analogous to an internet merchant waiting for a credit card confirmation before fulfilling).

### *3. Payment At Convenience Store Chain X*

At participating Convenience Store Chain X stores (and in the future at participating locations of other retailers), some of which are located in New York State, the User presents the Service X Slip, Card, or Mobile Image along with the cash payment to the Retailer’s cashier. The cashier will then scan the unique transaction barcode or PIN. Upon scanning the barcode/PIN, Petitioner is notified, via Petitioner’s proprietary processes through the internet (or other form of connectivity), that the User has tendered the cash payment. Petitioner then seeks authorization from the applicable Merchant, again via the internet. Upon reply from Petitioner, the Retailer then accepts the User’s cash payment and provides the User with a receipt describing the transaction and Merchant. Petitioner then confirms the receipt and Merchant will then process the “suspended” transaction and proceed to ship/deliver the goods or services to the User on the original terms established between Merchant and that User. The Retailer will remit the cash payment to Petitioner, less a commission, typically within three business days.

At that time, upon receipt of the payment from the Retailer, Petitioner remits the payment to Merchant, less a commission. While a transaction is pending, a User can track the status of the transaction on Petitioner’s website. If the User fails to pay at the Retailer, or if Merchant does not authorize payment, then the transaction is cancelled.

## **Analysis**

### *Is Service X Subject to Sales and Use Tax?*

No. The Tax Law imposes tax on the retail sale or use of tangible personal property, including prewritten software, and certain enumerated services, including information services (Tax Law § 1105[a], [c]). Service X, as described above, is not among the enumerated services subject to tax. Accordingly, assuming the provision of Service X is Petitioner’s only activity in the State, Petitioner does not have to register as a person required to collect sales and use tax (Tax Law § 1134).

### *Do Merchants Qualify As Vendors As a Result of Using Service X to Receive Payments from their Customers?*

No. To be required to collect sales and use tax, a seller must qualify as a vendor, which is defined in Tax Law § 1101(b)(8). Tax Law § 1101(b)(8)(v) excludes from the definition of a vendor “a person who is not otherwise a vendor who purchases fulfillment services carried on in New York by a person other than an affiliated person.” For purposes of that subparagraph, “persons are affiliated persons with respect to each other where one of such persons has an

ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of such persons by another person or by a group of other persons which are affiliated persons with respect to each other.” Tax Law § 1101(b)(18) defines “fulfillment service” to include “billing and collection activities.” Convenience Store X’s acceptance of payment from persons using Service X to make payments to Merchant is a collection activity. Accordingly, assuming that Petitioner, Merchant, and Convenience Store X are not “affiliated persons” for purposes of section 1101(b)(8)(v), then Convenience Store X’s acceptance of payment would not qualify Petitioner or Merchant as vendors for purposes of sales tax.

*Does Use of Service X to Accept Payment from Customers Constitute Doing Business for Purposes of Article 9-A Corporation Tax?*

No. Section 209.2(f) of the Tax Law provides that a foreign corporation shall not be deemed to be doing business, employing capital, owning or leasing property, or maintaining an office in New York State, for purposes of Article 9-A of the Tax Law, by reason of "the use of fulfillment services of a person other than an affiliated person.” For purposes of section 209.2(f), an affiliated person is an entity that either owns or controls a majority interest in the foreign corporation, either directly or indirectly, or an entity the majority interest in which is owned and controlled by the foreign corporation, either directly or indirectly. “Fulfillment services” has the same definition for Article 9-A corporation tax purposes as it does for sales tax purposes, including “billing and collection activities” (*see* Tax Law § 208.19). Accordingly, assuming that Petitioner, Merchant and Convenience Store X are not “affiliated persons,” Merchant’s use of Service X to accept payment from its customers does not constitute doing business in New York for purposes of Article 9-A of the Tax Law.

DATED: February 9, 2012

/S/  
\_\_\_\_\_  
DEBORAH R. LIEBMAN  
Deputy Counsel

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.