

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-03(11)S
Sales Tax
March 25, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020312F

On March 12, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from PricewaterhouseCoopers LLP, by Linda Velez, 1301 Avenue of Americas, Room 7W-176, New York, New York 10019.

The issue raised by Petitioner, PricewaterhouseCoopers LLP, is whether services provided by Company X (hereinafter Company), which include analyst consultation and research services, are subject to sales and compensating use tax if delivered to a customer in New York.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Company is a research and advisory firm headquartered in Massachusetts. Company's services include the sale of subscriptions to research information prepared by Company, access to Company's online research library, presentations, telephone conference calls, white papers that are provided via hard copy or electronically, and strategic management consulting services. In providing these services, Company's analysts may travel to client locations throughout the United States.

Clients benefit from Company research and analysis in several ways. The research subscription component of its advisory services delivers research online to registered Web users of client organizations, providing them with ongoing coverage in a wide range of topics. In addition, clients are encouraged to take advantage of direct access to Company's analysts, whether by telephone, through e-mail, or in face-to-face meetings, for in-depth discussions on topics covered in each service's research.

Company opened a small office in New York in August 2000 which currently maintains a staff of two employees. The maximum number of employees at this location has been four. Prior to Company opening this office, representatives would travel into the State to cover the New York territory.

Company's customers are in various industries, and include banks, securities and investment firms, insurance companies, technology firms, and professional services firms. Company separately states its charges on its invoices as follows:

Continuous Advisory Service: Company provides a subscription service that includes research notes from Company's research catalog in subscribed subject areas; access to Company's research analysts; "web IDs" to access Company's online research library; specific inquiries of research analysts; on-site meetings or presentations with analysts; passes to Company's annual users conference; and access to live teleconferencing events on specific issues affecting business technology strategies.

The information provided in the subscription service is provided to multiple clients. Clients not only receive access to the current research produced during their subscription period, but they are also entitled to receive the historical catalogue of research produced for their appropriately subscribed services.

Company delivers a portion of its tangible subscription materials into the State by common carrier and will also send information electronically via the Internet. Company began its electronic delivery in 1994 using Lotus Notes and delivery via the Internet in 1996. For most clients, the preferred method of delivery is via the Internet and the value of a subscription centers on receiving access to Company's research database rather than receiving tangible copies of new research analysis. For example, a subscription may include access for 100 of a client's employees to Company's research database and the client would receive only a single tangible copy of new research analysis prepared by Company. Accordingly, for most customers the value of the tangible copies of research analysis received is minimal compared to the value of receiving access to Company's database.

Reprints: Copies of previously published research notes are sent to customers either electronically via the Internet, or in hard copy.

Teleforums: Live teleconferencing events are produced featuring presentations by Company's analysts on specific issues affecting business technology strategies for customers doing business in financial services. The teleforum lasts 60 minutes and includes a 30-40 minute presentation by Company's analysts and a subsequent question and answer session.

Presentations: In person presentations are made by Company analysts on a topic determined by the client. Company prepares all the research, conducts the analysis, assembles any handouts and delivers the presentation. Generally, the presentations are held at the client's location or at a conference sponsored by the client.

White Papers: Company prepares white papers that offer in depth analysis on technology, products, or issues and how such items may impact the client. Company prepares the white papers for a client on a specific topic chosen by the client.

Strategic Management Consulting Services: Offers specific advice and insight relative to strategic planning including competitive market assessments, best practice reviews, and technology strategy assessments.

Applicable Law and Regulations

Section 1101(b)(8) of the Tax Law provides, in part:

Vendor. (i) The term "vendor" includes:

(A) A person making sales of tangible personal property or services, the receipts from which are taxed by this article;

(B) A person maintaining a place of business in the state and making sales, whether at such place of business or elsewhere, to persons within the state of tangible personal property or services, the use of which is taxed by this article;

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

(1) 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

* * *

(9) (i) The furnishing or provision of an entertainment service or of an information service (but not an information service subject to tax under paragraph one of this subdivision), which is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature, such as entertainment or information services provided through 800 or 900 numbers or mass announcement services or interactive information network services. Provided, however, that in no event (i) shall the furnishing or provision of an information service be taxed under this paragraph unless it would otherwise be subject to taxation under paragraph one of this subdivision if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner nor (ii) shall the provision of cable television service to customers be taxed under this paragraph.

(ii) Notwithstanding the rate and date set forth in the opening undesignated paragraph of this section and notwithstanding the opening undesignated paragraph of this subdivision, on and after September first, nineteen hundred ninety-three, in addition to any other tax imposed under this section, and in addition to any other tax or fee imposed under any other provision of law, there is hereby imposed and there shall be paid an additional tax at the rate of five percent upon the receipts which are subject to tax under subparagraph (i) of this paragraph on the furnishing or provision of an entertainment or information service which is received by the customer exclusively in an aural manner. Such additional tax shall not be imposed by section eleven hundred seven, eleven hundred eight or eleven hundred nine of this article and shall not be included among the taxes authorized to be imposed pursuant to the authority of article twenty-nine of this chapter.

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides:

Except as specifically provided otherwise, the sales tax is a “destination tax.” The 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.

Opinion

Company provides a number of different services to its clients. Company's Continuous Advisory Service includes a subscription service to Company's research notes, access to Company's on-line research library, and other services such as on-site meetings or presentations with analysts and access to teleconferences. Providing Company's clients with a subscription service to Company's research notes or on-line research library is a taxable information service described in Section 1105(c)(1) of the Tax Law. This service provides identical information to all customers. Such information is not personal or individual in nature and is incorporated into reports furnished to others. Accordingly, such sales are subject to sales tax pursuant to Section 1105(c)(1) of the Tax Law if delivered to a customer in New York. Although some of the other services included in the Continuous Advisory Service may not be enumerated taxable services, the entire charge for the Continuous Advisory Service is taxable if the charges for the taxable and nontaxable services are not separately stated. See Economic Cycle Research Institute, Inc., Adv Op Comm T & F, July 23, 1997, TSB-A-97(42)S.

Company prepares white papers that offer in depth analysis on technology, products, or issues and how such items may impact the client. Company prepares the white papers for a client on a specific topic chosen by the client. Where the information provided to the customer in a white paper is in the nature of a consulting service (i.e., the information contained in the white paper has been researched for the specific client, is personal and individual in nature, and is not or may not be substantially incorporated into reports furnished to persons other than the client by Petitioner) then the separately stated charge for the white paper is not subject to sales tax. However, a charge for a white paper consisting of information and analysis of technology, products and issues selected

TSB-A-03(11)S
Sales Tax
March 25, 2003

by the client, which is culled from Petitioner's database or files of previous white papers, or, another database source, and which is or may be incorporated into reports furnished to others by Petitioner, is subject to sales tax if delivered to a customer in New York. See Crowley Webb & Associates, Adv Op Comm T&F, January 11, 1995, TSB-A-95(2)S.

Company's sale of reprints to its customers, whether the reprints are on hard copy or are transferred electronically, are sales of information which is not personal or individual in nature and may be incorporated into reports furnished to others. Accordingly, such sales are subject to sales and use tax pursuant to Section 1105(c)(1) of the Tax Law if delivered to a customer in New York.

Company conducts teleforums which it describes as live teleconferencing events featuring presentations by Company's analysts on specific issues affecting business technology strategies for customers doing business in financial services. Teleforums last 60 minutes and include a 30-40 minute presentation by Company's analysts and a subsequent question and answer session. Company's charges for teleforums, where the information presented is in the form of consulting services, are not subject to sales tax. However, where such information is of a general nature, is only furnished by telephony or telegraphy, and would be subject to tax under Section 1105(c)(1) of the Tax Law if furnished in printed form, Company's charges for client participation in teleforums will be subject to tax pursuant to Section 1105(c)(9) of the Tax Law if delivered to a customer in New York.

Company's charges for in-person presentations and Company's sale of strategic management consulting services constitute sales of services not enumerated in Article 28 of the Tax Law. Accordingly, receipts from the sale of such services are not subject to sales tax.

Where sales of taxable and non-taxable items are bundled in a single transaction, the entire charge is subject to the tax unless charges for non-taxable items are separately stated on Company's bill or invoice, such charges are reasonable in relation to the total charges, and the services may be purchased separately. See Hodgson, Russ, Andrews, Woods and Goodyear, Adv Op Comm T&F, April 2, 1992, TSB-A-92(31)S; and Economic Cycle Research Institute, Inc., supra.

Since Company has a physical presence in the State in the form of an office located in the State, it is required to register for purposes of Article 28 of the Tax Law and to collect and remit sales and use tax on its taxable sales. See Section 1101(b)(8) of the Tax Law.

DATED: March 25, 2003

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

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