

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

TSB-A-09(4)S
Sales Tax
January 29, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S071120A

On November 20, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from Arthur R. Rosen, McDermott Will & Emery LLP, 340 Madison Avenue, New York, New York 10173. Petitioner, Arthur R. Rosen, submitted additional information relating to the Petition on February 11, 2008, April 11, 2008, and July 16, 2008.

The issue raised by Petitioner regarding its client (Company) is whether Company's charges to its clients for the services described below are subject to New York State and local sales or use tax.

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

Company is a limited liability company organized under the laws of the state of Delaware. Company currently has offices in New York, the District of Columbia, Florida, and London. Company provides services relating to its clients' compliance with various regulatory requirements, including those imposed pursuant to certain federal and state statutes as well as requirements imposed by both domestic and international securities industry bodies. Company utilizes its legal, regulatory, law enforcement, forensic accounting, forensic technology and investigative due diligence capabilities to perform its functions. Company is licensed as a private investigator in the state of New York.

Company's services are regularly provided to financial institutions, publicly traded companies, private enterprises, and government entities. Because the banking and securities regulators have set forth specific rules and guidelines that must be followed by banking and other financial service companies, regular compliance examinations and the development or remediation of the compliance, regulatory reporting and critical processes of such companies must be performed, often by an independent party such as Company. Often to ensure or test compliance, certain services must be re-performed, tested or audited using a variety of methodologies and tools to ensure that a client is in compliance with its regulatory requirements. In addition, the various industry regulators often require certain periodic and transactional filings to be made to maintain an overview of a client's activities. If a company has been examined or audited by an agency resulting in some regulatory mandate for changes to the company's compliance processes, it will retain Company to help correct the exposures. Clients may retain Company for services that may be reactive and proactive in nature.

The following is a detailed description of the services provided by Company.

A. Anti-Money Laundering (“AML”) Compliance

The USA Patriot Act requires financial institutions to establish AML programs that will help prevent and detect money laundering and the financing of terrorism. U.S. financial services regulators have been issuing severe penalties for programs that do not adhere to acceptable standards.

Under these circumstances clients may retain Company for services that include the development and implementation of an AML program. Company performs diagnostic review of the current policies and procedures of the client, provides an analysis of the weaknesses and strengths of the current program, validates the client's compliance, performs independent testing of the client's AML program, provides risk assessments on suspicious activity (relating to the Bank Secrecy Act), assists with reporting requirements (Suspicious Activity Reports), and provides training for new policy and procedure enhancement recommendations. All of the services assist the client in complying with federal regulatory authority.

B. The Office of Foreign Assets Control (“OFAC”) Compliance

The Office of Foreign Assets Control is a branch of the United States Department of the Treasury. It administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals. The OFAC rules apply to all U.S. citizens, companies, overseas branches of U.S. companies, and certain subsidiaries of U.S. companies.

Company's services relating to this category entail analyzing the client's business with a goal of identifying specific OFAC risks and developing a customized compliance program with detailed policies and procedures for the client to follow. A diagnostic review of the client's existing OFAC compliance program is performed comparing it to the legal requirements of OFAC. A review is also performed of the filtering software used by the client to determine whether it is correctly suited to a specific business line or product.

C. Due Diligence for Mergers and Acquisitions

Company's services relating to this category include a review of a target company's policies, procedures, and programs relating to compliance with OFAC and AML rules and regulations. Company's client requests this service to determine whether there is any compliance, financial, or reputation risk associated with a potential acquisition target and how it would affect its business. If a potential risk in business transactions, procedures, compliance or any other area is identified, it may negatively affect the current business of the client if the acquisition is made.

D. Transaction Look Backs

Financial regulators have been requiring institutions to implement transaction monitoring look-back projects to remediate any shortcomings in their Suspicious Activity Reporting (“SAR”) programs.

Company’s services in this category are composed of the risk assessment of hundreds of millions of transactions. A customized risk assessment tool and case management system has been developed by Company and customized to the client’s needs. The tool and system aid in identifying potentially suspicious transactions and preparing cases to facilitate the look-back review. Data normalization, categorizing, stratifying and grouping of data is part of the methodology for performing the review. Also part of the service is risk assessment scoring and case creation, which is the identification of transactions or groups of transactions that carry a certain risk element and are identified as a case for further review relative to known typologies for money laundering or terrorist financing. Company also may provide quality assurance of the review, participate in meetings with regulators, or oversee the entire transaction monitoring look-back review.

The second phase of a look-back project consists of analyzing the transactions and parties to ascertain whether the indicia of money laundering suspicion that presented itself via the technology review remain relevant when carefully scrutinized. More specifically, analysts summarize the transactional activity and summarize the results of the application of hundreds of programmed risk assessments, analyze the flow of funds, geographies and other information compiled by the financial institution [such as previously filed Suspicious Activity Reports (“SARs”), Know Your Customer files, and internal watch-lists] and compare this data to the parties identified and any public records relating to them. The work product from this analysis is summarized in a factual memorandum and becomes part of the financial institution’s case files.

Additionally, examinations that support the indicia of suspicion relating to money laundering via the application of risk assessments and researching of parties are presented to the financial institution for its further evaluation with respect to a SAR filing, as required by the Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”); that filing will be pursuant to a memorandum of fact. Furthermore, SAR filings require the information therein to be provided only to FinCEN, and be subject to a limited distribution within the financial institution for its further review in connection with closing the case, which also requires a memorandum of fact. Each such look-back project can consist of analyzing thousands of unique transactions and work products unique not only to the specific transaction, but also to the specific financial institution client.

E. Foreign Corrupt Practices Act (“FCPA”) Compliance

The Foreign Corrupt Practices Act was enacted to prevent corporations from bribing foreign officials for the purpose of winning contracts abroad. Along with the anti-bribery provision, there are “books and records” provisions that require the financial records of SEC-regulated issuers of securities to be maintained in a transparent manner with enough detail that if illicit payments were made they could be identified.

Company’s services in this category are composed of making FCPA vulnerability assessments, including books and records analyses, as well as electronic journal entry or payee filtering. Company also assists in developing an FCPA program, policies, and procedures and trains all applicable employees of the client. Company may also assist in investigations relating to FCPA compliance.

F. Fraud and Misconduct Reviews

Fraud, waste, abuse, and other misconduct by an organization’s employees, managers or executives, or external affiliations can create negative perceptions about the integrity of the organization and have a negative financial impact.

Company provides fraud detection services to ensure the financial security and integrity of a company. On a prospective basis, Company provides guidance to manage risks, assess internal controls, programs and processes and also assists in measuring a company’s ability to prevent and detect fraud from occurring. On a reactive basis, Company assists by performing an assessment of the magnitude of the occurrence, quantifies and evaluates the impropriety and helps identify the responsible parties. The assessment is performed through reviewing applicable documents, analyzing data, conducting interviews and preserving and recovering digital evidence. Company provides recommendations to mitigate the impact of the occurrence, implements internal controls, and prepares reports of its findings to the client either for internal use or for legal proceedings. Company’s personnel are sometimes called upon to provide testimony at court hearings, depositions or trials as a fact, summary, or expert witness.

G. Forensic Technology Services

Company, through its electronic forensic evidence services, can identify electronic documents, whether in plain sight, hidden, or deleted. Its toolset and discovery method collects and analyzes the data without compromising the integrity of the document or information retrieved. Strict disciplines are used to maintain a chain of custody when retrieving and analyzing data as it may be used in conjunction with investigations or legal proceedings.

Company may also provide electronic discovery services to the client through the indexing and sorting of high volume documents. Company manages the documents, categorizes them and provides a database host to be used by its client when a search within the documents is needed.

H. Background Investigations

A client may require Company to analyze its potential exposure to certain risks by conducting background investigations. In such instances Company researches the history of a company or individual by gathering and analyzing publicly available information. The information obtained may relate to personal history, financial history, business transactions and relationships, investments, litigation, and any other category relevant to the cause of interest. These services are used by Company's clients to determine whether they should engage in certain business transactions, to identify strengths and weaknesses in policy and procedure within an organization, and for regulatory compliance or other business purposes, including acquisitions-related due diligence.

Company then analyzes and cross references the information gathered. The information gathered is then subject to detailed and comprehensive analysis conducted by Company. Company would then prepare a written report setting forth the client's objectives, a summary of the data resources queried and of the research process, an executive summary of substantive findings, followed by the body of the report that would provide a detailed account of any substantive findings. Each report concludes with a specific and detailed list of recommended additional research steps that could be explored should the client wish to proceed further.

Upon delivery of the written report, Company would then schedule an in-person or telephone conference with the client to review the analysis and recommendations, to assist the client in interpreting and utilizing the report to meet its objectives as well as to brainstorm additional ideas about possible next steps. Company's work product is highly one client, including both the research and analysis, is relevant to any other client as both the research and the analysis are tailored to the specific needs of the particular client.

I. General Litigation Support

The services discussed above are mainly provided for internal use by Company's clients. However, the services may also be provided as litigation support for legal proceedings. As such, in addition to the services described in previous sections A through H, Company may prepare analyses such as potential settlement scenarios, modeling, and analyses of financial implications. Additionally, certain personnel of Company perform expert witness services related to Company's core competencies and service offerings.

J. Securities Industry Compliance and Investigations

Securities firms are required to comply with various regulatory authorities. Failure to comply can lead to civil and criminal liability for a firm, its officers and directors, as well as monetary fines and damages, potential loss of market share, and damage to the reputation of the firm. It is important for a firm to develop and execute policy procedures, and internal controls that ensure compliance with the applicable regulatory requirements.

Company's services in this category consist of conducting in-depth reviews and assessments of the client's current compliance program and developing and implementing the necessary solutions to ensure that the programs satisfy the relevant regulatory requirements, but are flexible to change with regulatory changes. Company may also formulate and conduct training and educational programs for the client's employees. The reviews, assessments, and training may cover any field of compliance, including broker-dealer and investment advisory supervisor obligations, market timing and late trading, sales practices and order handling, fraud and misconduct, and issues relating to gifts and gratuities.

K. Independent Private Sector Inspector General ("IPSIG") and Monitoring Services

An IPSIG is an independent private sector firm with legal, audit, investigative and loss prevention skills. It is employed by an organization or government entity, either voluntarily or by compulsory process, seeking to attain compliance with relevant laws and regulations. It also aids companies with efforts to deter, uncover, and/or report unethical and illegal conduct by, within, or against the entity. The IPSIG is usually selected by and reports to a government entity while the organization is responsible for related costs.

Company's services in this category consist of providing IPSIG services to an organization. An employee of Company is selected by the government to be the IPSIG for a specific organization. Company's employees ensure compliance with governing laws, contract terms, court orders, and settlements. In addition, Company may conduct an investigation into financial improprieties, fraud, and misconduct. Company designs and implements a program to respond to the impropriety that resulted in the IPSIG being assigned. Testimony and/or written reports may be provided for administrative and court proceedings if requested.

Monitoring services include risk management program assessments, internal control assessments, evaluations of current compliance programs, data analyses, background investigations, and fraud investigations.

L. *Stock Options Investigations*

Public corporations may grant stock options to senior executives. Many have come under scrutiny stemming from questionable accounting and disclosure of these grants. Investigations have focused on whether companies may have “backdated” the option to dates when the related stock was selling at a lower price. This potentially enhances the value of the option.

Company’s services include assisting clients with analyzing the potential risks associated with the granting and disclosing of stock options. The risks include regulatory enforcement actions, criminal prosecution, civil lawsuits, adverse tax implications, and insurance liability for directors and officers. Company assists with internal or independent audit processes to conduct efficient, extensive reviews, and reviews SEC filings and supporting documentation. Company may also review, assess, develop and implement enhancements to a company’s internal control standards, policies, and procedures.

M. *Regulatory Training*

Company’s services in this category consist of providing training to responsible parties within an organization to maintain and update their knowledge of compliance with regulated industry standards. Company creates the subject matter content, selects and/or produces the training materials, selects and trains instructors, determines the ideal format for the training, and creates a maintenance system for preserving training materials and employee participation. Each training program is specifically tailored to each client’s needs.

N. *School District Fraud*

Company’s services in this category consist of fraud and misconduct reviews within a school district’s administration. Company assists the district with complying with the state comptroller’s accountability and reform requirements and assists in the prevention, detection, and investigation of fraud and misconduct matters. Company conducts interviews, gathers and reviews information, prepares fact-finding reports, and provides expert witness services in court proceedings. Forensic accounting service may entail an examination of an organization’s books and records to identify suspected fraud, misconduct irregularities, or improprieties. A systematic assessment of the organization’s internal controls and accounting systems are reviewed to identify potential areas of weakness; Company also provides recommendations to mitigate the risk of accounting errors. Data analysis may be conducted to detect fraud. This involves obtaining and merging data sets from multiple sources and analyzing the information to identify errors, fraudulent activity, or anomalies in data.

O. Healthcare Compliance

Company's services relating to this category include developing effective and comprehensive compliance programs specific to the health care provider type in accordance with applicable federal and state laws and regulations. Company also designs and implements policies and procedures tailored to the specific needs of the health care institution, in accordance with all prevailing requirements by the Centers for Medicare & Medicaid Services, the United States Department of Health and Human Services, the Federal Sentencing Guidelines, and all applicable state regulatory agencies. In connection with adherence to federal and state regulatory requirements, Company develops and conducts specific compliance training procedures for a client's employees.

Another part of this service includes conducting risk assessments or diagnostic studies to identify high risk areas of potential exposure and compliance deficiencies for a specific health institution or provider. Because of those potential compliance deficiencies, Company may test and monitor the effectiveness of a client's existing compliance plan, including claim submission processes, education and training, and applicable standards of conduct. Company may also conduct internal compliance investigations, determine findings, and make corrective recommendations to the client.

Additionally, Company's services in this category include coding review by its expert certified coding specialists, auditing and analyzing medical records and claims, performing statistically-based data mining and billing database analyses, providing cost report analyses and serving as an Independent Review Organization under the terms of a Corporate Integrity Agreement.

Applicable law and regulations

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 . . . 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,...

* * *

(8) Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

Section 1110(a)(C) of the Tax Law imposes compensating use tax on the use within New York “of any of the services described in paragraphs (1), (7) and (8) of subdivision (c) of section eleven hundred five.”

Section 70 of the General Business Law provides, in part:

Licenses

1. The department of state shall have the power to issue separate licenses to private investigators, bail enforcement agents and to watch, guard or patrol agencies. . . .

* * *

3. No person, firm, company, partnership, limited liability company or corporation shall engage in the business of furnishing or supplying for fee, hire or any consideration or reward information as to the personal character or activities of any person, firm, company, or corporation, society or association, or any person or group of persons, or as to the character or kind of the business and occupation of any person, firm, company or corporation, or own or conduct or maintain a bureau or agency for the above mentioned purposes . . . without having first obtained from the department of state, as hereafter provided, a license so to do as private investigator for each such bureau or agency and for each and every sub-agency, office and branch office to be owned, conducted, managed or maintained by such persons, firm, limited liability company, partnership or corporation for the conduct of such business. Nothing contained in this section shall be deemed to include the business of adjusters for insurance companies, nor

public adjusters licensed by the superintendent of insurance under the insurance law of this state.

Section 71(1) of the General Business Law provides, in part:

“Private investigator” shall mean and include the business of private investigator and shall also mean and include, separately or collectively, the making for hire, reward or for any consideration whatsoever, of any investigation, or investigations for the purpose of obtaining information with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed for fee, hire or reward ; crime or wrongs done or threatened against the government of the United States of America or any state or territory of the United States of America; the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other groups of persons, firm or corporation; the credibility of witnesses or other persons; the whereabouts of missing persons; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for fires, or libels, or losses, or accidents, or damage or injuries to real or personal property; or the affiliation, connection or relation of any person, firm or corporation with any union ,organization, society or association . . . or with reference to the conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors, and sub-contractors; or the securing of evidence to be used before any authorized investigating committee, board of award, board of arbitration, or in the trial of civil or criminal cases. . . .

Opinion

Company provides services relating to its clients’ compliance with various regulatory requirements, including those imposed pursuant to certain federal and state statutes as well as requirements imposed by both domestic and international securities industry bodies. Company utilizes its legal, regulatory, law enforcement, forensic accounting, forensic technology and investigative due diligence capabilities to perform its functions. Company is licensed as a private investigator in the state of New York. As part of Company’s provision of compliance review services, Company may also be asked to investigate and identify specific acts of wrongdoing, including identifying fraud, and preparing and testifying for legal proceedings.

The provision of protective and detective services is subject to the sales tax under section 1105(c)(8) of the Tax Law. As the Tax Law contains no definition of detective services or detective agency, the courts have found it appropriate to equate the terms "detective services" and "detective agencies" to the "broad definition of private investigator" found in section 71 of Article 7 of the General Business Law. See *Compass Adjusters and Investigators Inc. v Commissioner of Taxation and Finance* (197 AD2d 38). As described in section 71(1) of the General Business Law such services include, for example, investigations for the purpose of obtaining information with reference to the identity, habits, conduct, movements, whereabouts,

affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other groups of persons, firm or corporation; or securing evidence to be used in the trial of a civil or criminal case. See *VR Investigations Inc.*, Adv Op Comm T& F, April 28, 2008, TSB-A-08(19)S.

Therefore, in instances where any of the services being performed by Company requires a private investigator's license issued under Article 7 of the General Business Law, Company's sales of such services are subject to sales and use tax imposed under sections 1105(c)(8) and 1110(a)(C) of the Tax Law. The charges to the client for performance of such detective services are subject to sales tax at the rate in effect where the services are delivered.

Company's services that relate solely to the performance of regulatory compliance reviews of the business practices of the client to determine whether the client's practice and procedures comply with various regulatory requirements are advisory and consulting services and are not among the enumerated services taxed pursuant to the provisions of section 1105 of the Tax Law.

Accordingly, to the extent that the services entitled *Anti-Money Laundering Compliance*, *The Office of Foreign Assets Control Compliance*, *Transaction Look Backs*, *Foreign Corrupt Practices Act Compliance*, *Stock Options Investigations*, and *Healthcare Compliance* relate only to the performance of regulatory compliance reviews such services are not subject to sales tax. The services entitled *Securities Industry Compliance and Investigations* and *Regulatory Training*, in addition to providing services with respect to regulatory compliance, also provide clients with staff training programs. These training programs are instructional services which likewise are not among the enumerated services taxed pursuant to the provisions of section 1105(c) of the Tax Law. However, as part of its provision of compliance review and training services, Company may also be asked to investigate and identify specific acts of wrongdoing, including identifying fraud, and preparing and testifying for legal proceedings. In such instances Company extends its service beyond merely providing clients with advice and consultation in regard to the clients' policies and procedures to the investigation of specific acts of wrongdoing. When Company's services go beyond general advisory and consulting services, Company may be acting in its capacity as a private investigator. When Company performs activities requiring a private investigator's license issued under Article 7 of the General Business Law, Company's sale of such services are subject to sales and use tax under sections 1105(c)(8) and 1110(a)(C) of the Tax Law. Therefore, in those instances where Company in addition to providing advice relating to a customer's regulatory compliance enters into a contract to perform or performs such investigative services or any combination thereof, the charges to the client for performance of such services are subject to the sales tax on detective services at the rate in effect where the services are delivered.

For example, in performing the services entitled *Due Diligence for Mergers and Acquisitions*, *Fraud and Misconduct Reviews*, *Forensic Technology Services*, *General Litigation Support*, *Independent Private Sector Inspector General ("IPSIG") and Monitoring Services*, and

School District Fraud, it appears that Company may be asked to investigate persons; identify specific acts of wrongdoing, including fraud; recover evidence; and prepare and testify for legal proceedings in connection with these services. In such instances Company extends its service beyond merely providing clients with advice and consultation in regard to the clients' policies and procedures to investigative work that may relate to specific acts of wrongdoing. Therefore, in those instances where Company performs these services or any combination thereof, the charges to the client for performance of such detective services are subject to sales tax at the rate in effect where the services are delivered.

When providing the service entitled *Background Investigations*, were Company to merely gather publicly available information, this service would be a taxable information service under section 1105(c)(1) of the Tax Law. Similarly, in providing the service entitled *Background Investigations*, if Company was hired to conduct an investigation (for example, a verification of the accuracy or truth of such public information, or locating or interviewing witnesses or performing background checks of individuals or corporations) in its capacity as a private investigator, such service would be considered a taxable protective and detective service under section 1105(c)(8) of the Tax Law. See *Hotchkiss, Stone & Longtin LLC*, Adv Op Comm T& F, January 27, 1999, TSB-A-99(3)S. However, if, in providing the service entitled *Background Investigations*, Company uses publicly available information it gathers for the purpose of providing advice to the client of the potential exposures to investment or financial risk then the receipts from sales of such service would not be subject to tax. Such service of advising a client regarding its potential investment or financial risk would not be included among the enumerated services taxed pursuant to the provisions of section 1105(c) of the Tax Law.

It is not clear from the facts in this Opinion to what extent, if any, Company may be providing software to its clients for their use. (Note, for example, the risk assessment tool used in *Transaction Look Backs*, the electronic journal and payee filter used in *Foreign Corrupt Practices Act Compliance*, and the applications used in *Forensic Technology Services*.) To the extent that access to software applications is being provided by Company to its clients, Company may be making sales of prewritten software that are subject to sales tax under section 1105(a) of the Tax Law.

When receipts from the sale of taxable and nontaxable items are bundled in a single transaction, the entire charge is subject to sales tax unless the taxable and nontaxable items may be purchased separately and the charges for such items are separately stated on Company's bill or invoice and are reasonable in relation to the total charges. See section 1101(b)(3) of the Tax Law and *Penfold v State Tax Commission*, 114 AD 2d 696; *Hodgson, Russ, Andrews, Woods and Goodyear*, Adv Op Comm T&F, April 2, 1992, TSB-A-92(31)S; *PricewaterhouseCoopers LLP*, Adv Op Comm T&F, March 25, 2003, TSB-A-03(11)S. Provided that Company's advisory and instructional services are sold separate from and the charges for such services are reasonable and separately stated from separately contracted charges for its performance of taxable detective services, only the charges for the detective services will be subject to sales tax.

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Purchases by organizations described in section 1116(a) of the Tax Law are not subject to sales and use tax. Therefore, Company's sales of its services, which are otherwise subject to tax, to entities that have been designated as exempt organizations under section 1116(a) of the Tax Law, or to United States or New York State government entities (e.g., school districts), will not be subject to sales tax provided Company receives a properly completed Exempt Organization Exempt Purchase Certificate (Form ST-119.1), or, in the case of government entities, a government purchase order, from the purchaser within 90 days of the date of delivery of the service. See section 1132(c) of the Tax Law and Part 529 of the Sales and Use Tax Regulations. Company must retain such exemption documents in its records in order to prove exempt sales. See section 533.2 of the Sales and Use Tax Regulations.

DATED: January 29, 2009

/s/
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Taxpayer Guidance Division

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.