

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

TSB-A-10(45)S
Sales Tax
September 24, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100624A

Petitioner, [REDACTED], requests an Advisory Opinion about whether its [REDACTED] services are subject to New York State and local sales and use taxes. We conclude that these services are subject to tax as information services, and Petitioner must collect tax on these services beginning September 1, 2010.

Facts

Petitioner provided the following facts. Petitioner provides “peer group analysis” services, which allows a customer to compare itself to its competitors using factors such as industry, size, revenue, and geographic locations. The [REDACTED] product line provides peer group analysis for firms engaged in the sale of mutual funds, annuities, and securities. These services allow a customer to determine its market size and market share of managed mutual funds, annuities, or securities in comparison to its competitors in specified geographic areas. Below is a description of three of Petitioner’s services

- [REDACTED] for Annuities. This product provides peer group analysis for companies offering annuity sales. This product is best used for determining a company’s market size and share as compared to its peer group, and to assess its performance in capturing new annuity sales. This product can also be used for territory planning and sales force management. This product is based on over \$500 billion of direct-measured individual variable annuity assets, including nearly \$100 billion in direct-measured annual individual variable annuity sales collected from the nation’s leading variable annuity issuers. Market size and share can be assessed by custom geographic areas, custom distribution channel, product type, and contract size.
- [REDACTED] for Securities. This product provides peer group analysis for brokerage and mutual fund firms. This product is best used for determining a company’s market size and share as compared to its peer group. This product is based on about \$10 trillion in direct-measured financial assets collected from the members of Petitioner’s consortium. Market size and share can be assessed by geographic area, account type (including over 72 fund investment objectives), and product type (including over 65 security types).
- [REDACTED] for Wholesale Mutual Funds. This product provides peer group analysis for mutual fund wholesalers. This product is best used for determining a company’s market size and share as compared to its peer group, and to assess wholesaler performance for new fund sales by custom wholesaler territories. This product is based on almost \$40 billion in direct-measured fund sales gathered quarterly from the nation’s leading mutual fund manufacturers. Market size and share can be assessed by custom territory, custom distribution channel, and fund objective.

Petitioner works closely with its customers to understand the customer’s reporting hierarchy (i.e., market area, region), and to establish the geographic parameters (e.g, regions, territories) that the

customer wants to be incorporated into its report. Petitioner reviews this information to determine whether it can be accurately linked to standard geographies (Census, Core Based Statistical Areas, etc.) and Petitioner's most current ZIP Code Roster. Petitioner prepares specifications for building custom geographies to be integrated into a customer's report.

Each of the products described above is a customized configuration of data based on a customer's specific request. A customer defines the financial attributes that it wants to be factored into a specific analysis. Each analysis for a customer is unique and no two results are the same. The information described in each result is proprietary to the customer for which the analysis was performed, and Petitioner's resources are dedicated to making each result unique. Results provided to one customer are not provided to other customers.

Petitioner's customers are typically financial services firms, securities firms, and wealth management and investment advisors. In order to obtain the services described above, a customer must be a member of a consortium of companies that provide data on their own clients. For example, if a customer is interested in buying ██████████ for Wholesale Mutual Funds, the customer must be a part of the consortium of companies that agree to provide data about their own portfolio of managed mutual funds. Petitioner aggregates all of the information about the mutual funds, annuities, and securities of consortium members. Petitioner organizes, manipulates, and interprets the information, and removes any personally-identifying information about the owners of the mutual funds, annuities and securities.

Analysis

The services Petitioner describes are information services subject to State and local sales and use taxes. Tax Law section 1105(c)(1) imposes sales tax on the receipts for the service of furnishing of information by printed matter, 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 that is personal or individual in nature and that is not or may not be substantially incorporated in reports furnished to other persons. Petitioner aggregates information of the consortium members, and provides reports to customers about their market share as compared to their peer group. The analysis and results provided to customers are based on the aggregated information and collected by Petitioner from consortium members. Consequently, Petitioner's services are information services subject to sales and use taxes. *See* Tax Law §1105(c)(1); 20 NYCRR § 527.3(a)(2).

The exclusion for information that is personal or individual in nature and that is not or may not be substantially incorporated in reports furnished to other persons does not apply to Petitioner's services. The first criterion (information that is personal or individual in nature) is satisfied only by information that is uniquely personal or individual in nature. *Matter of Allstate Ins. Co. v. Tax Commn. of the State of New York*, 115 AD2d 831, *aff'd* 67 NY2d 999; *Twin Coast Newspapers, Inc. v. State Tax Commission*, 101 AD2d 977. It is the source of the information which controls whether the report prepared will meet the criteria of "personal and individual." *Matter of ADP Automotive Claims Service Inc.*, Tax Appeals Tribunal, August 8, 1991. Information is not uniquely personal or individual in nature if it comes from a common source, regardless of whether the information is customized in some manner to respond to the raw data submitted by the customer. *See Matter of ADP Automotive Claims Service Inc. v Tax Appeals Tribunal*, 188 AD2d 245 (3rd Dep't 1993); *Rich Products Corporation v Chu*, 132 AD2d 175 (3d Dep't 1987); *Towne-Oller & Assoc. v State Tax Comm*, 120 AD2d 873 (3d Dep't 1986); *Alan/Anthony, Inc.*, TSB-A-92(51)S. The information Petitioner provides to customers is obtained from a common database of information of all the consortium members. Thus, Petitioner's services do not meet the first criteria of the exclusion.

Similarly, Petitioner's services do not satisfy the second criterion of the exclusion. In order to obtain Petitioner's services, a customer must be a member of a consortium of companies that agree to provide data about their own clients' portfolios. The information Petitioner provides to its customers is based on the aggregated information of all consortium members. Moreover, information about a particular customer's market share necessarily incorporates information about its competitors. Thus, the information provided to customers by definition can be substantially incorporated in reports furnished to others. See *Matter of Rich Products., supra*; *Twin Coast Newspapers, supra*. Accordingly, Petitioner's services do not meet the exclusion for information services that are personal or individual in nature.

DATED: September 24, 2010

/S/

DANIEL SMIRLOCK
Deputy Commissioner and 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.