

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

TSB-A-12(4)S
Sales Tax
March 2, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S110606A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether he has to charge sales tax to clients for any of the real estate consulting services he will be performing.

We conclude that, under the facts presented, Petitioner's services are not subject to State or local sales or compensating use taxes.

Facts

Petitioner presented the following facts and questions with his petition. Petitioner provided additional facts by telephone on September 19, 2011. Petitioner is starting a real estate consulting firm. All of the anticipated consulting functions are personal or individual in nature. Petitioner will not prepare written reports for clients. Petitioner will not share information prepared for a client with any other person. Petitioner is not an engineer or real estate broker. Petitioner does not repair or maintain any real or personal property for his clients. As an independent consultant, Petitioner will perform the services listed below for real estate landlords, developers and other purchasers of commercial properties (together, "clients"):

1. Locate properties for sale by using personal contacts as well as major real estate brokers.
2. Determine the suitability of the properties for specific clients. This does not include Petitioner inspecting physical systems; rather, the client would hire an engineer or inspector to look at HVAC and other systems and property conditions.
 - 2a. Develop a custom analysis including cash flow spreadsheets of historical performance and long term financial projections.
 - 2b. Tour the inside and outside of selected properties and add custom observations to analysis.
 - 2c. Make purchase recommendations including bid price based on observations, location analysis, and financial projection.
 - 2d. If client is interested, then bring client to property for site visit and tour of surrounding area. All information developed in Items 2 a-d is of a confidential nature and may not be disclosed to any individual other than the client.

3. Develop letters of intent for a client to send to a property owner to express interest in a property.
4. Assist in obtaining financing either directly from bank or through commercial mortgage broker as is most appropriate for specific financing.
5. Manage properties owned by clients, on behalf of the client. This means Petitioner would deal with the client's on-site property manager. For example, to confirm or revise the on-site manager's actions, such as whether an employee of the client under the on-site manager's supervision should be let go. Or to follow up with tenants to ensure that complaints the tenants made in the log kept by the on-site manager have been satisfactorily dealt with. Petitioner would not perform any of the remedial work needed to deal with those complaints.
6. Develop and approve opportunities to increase revenue. For example, this would include comparing comparable rentals in the area to see whether the client's rentals could be increased.
7. Develop and approve methods of decreasing expenditures.
8. Review tenants complaints if appealed by the tenants. Initially these complaints were disapproved by the on-site manager.
9. Review all hirings and termination of employees at the building site.

Analysis

Generally, consulting services are not among the enumerated services subject to sales or compensating use tax in section 1105 or 1110 of the Tax Law. Many of Petitioner's activities, for which he charges his clients, include collecting, compiling, and analyzing information and providing reports to his clients. Tax Law section 1105(c)(1) imposes the State's sales tax on the sale, other than for resale, of information services, including collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons. Section 1110(a)(C) imposes the State's compensating use tax on the use of such information services. To be taxable under section 1105(c)(1), the information must be written or in a form that can be reproduced in any manner. Excluded from sales and use taxes are information services that are personal or individual in nature and that are not or cannot be included in reports furnished to anyone other than the purchaser of the service. Petitioner asserts that he does not prepare any written report. Petitioner also asserts that he does not provide information developed for a client to any other person. Petitioner also indicates that he gives advice to clients based on information that he gathers looking at real estate or based on evaluations made after contacting clients' tenants and on-site property managers. Thus, to the extent that any of the components of Petitioner's services constitutes an information service, Petitioner's charge for that component would be excluded from sales and use taxes.

Tax Law section 1105(c)(5) imposes the State's sales tax on sales of the service, other than for resale, of maintaining, repairing, or servicing real property. Petitioner's clients' employees or independent contractors do work on or at the respective client's property. Petitioner does not himself repair, maintain, or service any of his clients' properties. Nor does Petitioner contract with any service providers to repair, maintain, or service any of his clients' properties. Thus, Petitioner's services are not subject to the sales tax imposed by section 1105(c)(5).

DATED: March 2, 2012

/S/

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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.