

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

TSB-A-13(13)S
Sales Tax
May 20, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120323A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED], asking whether the monthly fees charged to Petitioner's customers for certain litigation and electronic discovery services are subject to New York sales and uses taxes. We conclude that the receipts are not subject to such taxes because Petitioner is providing its customers with exempt personal information services.

Facts

Petitioner submits the following facts as the basis for the Advisory Opinion. As part of Petitioner's litigation and electronic discovery services, customers engage Petitioner to collect paper and electronic documents, process, and securely store customer data. The paper and electronic documents are the customers' own documents and are provided directly to Petitioner. As part of its service offering, Petitioner consults with customers to understand the specific requirements associated with organizing the documents. Petitioner then uploads, organizes, and saves the information on a web-based platform in a manner that meets the customer's specific requirements.

Petitioner charges its customers a monthly fee to retrieve and view documents in their native form, and request document modifications electronically. Customers access their documents by logging on to a web based platform that is hosted on Petitioner's servers located outside the State. Customers are able to use an online toolbar to perform various actions, such as tagging words for redaction, highlighting, and making annotations regarding document being reviewed. The actual images and electronic documents that were loaded into the web depositories remain static, as any redactions, highlights, etc. that are made by customers are overlays that simply direct Petitioner if a document modification is necessary. Petitioner bills a customer a monthly "hosting fee" for these activities on either a per user or per gigabyte of storage basis. Petitioner may also produce documents that reflect the customer's document modifications, but separately bills for such document production.

Analysis

We conclude that Petitioner's litigation support services are information services, but they are personal and individual in nature, and therefore not subject to New York State and local sales taxes.

As relevant here, Tax Law § 1105(c)(1) imposes tax on the receipts from the sale, except for resale of the service of:

[F]urnishing 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 or may not be substantially incorporated into reports furnished to other persons, and excluding the services of . . . persons acting in a representative capacity

Petitioner's litigation support services are information services because they include analyzing, compiling, and organizing the clients' information. This analysis adds to "intelligence" contained in the original documents, and therefore constitutes an information service. *See ADP Automotive Claims Services, Inc. v. Tax Appeals Tribunal*, 188 AD2d 245 (3d Dep't 1993). The ability for a client to mark and redact documents has some attributes of the use of software. However, because this is a single aspect of a more comprehensive service, and this aspect is integrally related to the overall service provided by Petitioner, we conclude that the primary function of Petitioner's service is the provision of an information service, and not the sale of prewritten computer software. *See TSB-A-10(59)S*.

We further conclude that Petitioner's services are excluded from the tax on information services because they are personal and individual in nature. Petitioner organizes and analyzes the clients' own documents and does not provide the original documents, or the analysis, compilation, or organization, to any party other than the client. The fact that the client, in the context of a litigation discovery process, may subsequently provide the original documents to a third party does not change this result.

Petitioner's separate charges for document production, if requested, are taxable sales of tangible personal property.

DATED: May 20, 2013

/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.