

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

TSB-A-13(36)S
Sales Tax
October 17, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120705A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether New York State or New York City sales tax applies to charges for kinesiology services provided by a “professional kinesiology practitioner” in New York City.

We conclude that neither New York State nor New York City sales tax applies to charges for kinesiology services provided by a professional kinesiology practitioner in New York City, so long as such services are not provided in a weight control or health salon or other place described in Tax Law § 1212-A(a)(2).

Facts

Petitioner describes herself as a professional kinesiology practitioner who provides kinesiology services in New York City. She describes those services as “a form of high level wellness counseling. . . . which draws from many other professional health modalities to offer the client an integrated approach to understanding their health and to figure ways to improve it. Modalities it draws from include Oriental Medicine, Chiropractic, Applied Kinesiology Psycho-neuro-immunology, nutrition, and human development, to name a few.” Those personalized services include activities such as obtaining a complete health history from the client, as well as the use of muscle testing as a biofeedback mechanism. Her services do not involve the sale or transfer of any tangible personal property. Petitioner provides these services in what she describes as professional healthcare offices; she states she does not provide these services in a gymnasium, health or fitness center, or a weight loss center. Kinesiology is not a licensed profession under Title VIII of the New York State Education Law.

Analysis

Tax Law § 1105(c) lists the services that are subject to New York State sales tax. The services Petitioner offers are not among these taxable services.

Tax Law § 1212-A lists the services that are subject to New York City sales tax. Section 1212-A(a)(2) authorizes the City to impose a local sales tax on “massage services and similar services, and every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna bath and similar establishments, and every charge for the use of such facilities” Section 11-2002(a) of the City’s Administrative Code imposes its tax on those services. The wellness counseling services Petitioner describes, offered from an office setting and not from a

weight control and health salon, gymnasium, Turkish and sauna bath, or similar place, are not among those taxable services. *See* TSB-A-13(6)(S); TSB-A-10(46)S.

Accordingly, neither New York State nor New York City sales tax applies to Petitioner's services.

DATED: October 17, 2013

/S/

DEBORAH R. LIEBMAN
Deputy 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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.