

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

TSB-A-14(22)S
Sales Tax
July 22, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S110428A

On January 21, 2011 Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] on behalf of [REDACTED] (Petitioner), [REDACTED]. Petitioner asks whether sales tax is imposed on its receipts for the service of acting as facilitator in the acquisition from the Federal Bureau of Investigation of criminal history information about applicants for employment with a client of Petitioner.

We conclude that the service is not subject to sales and use tax.

Facts

Petitioner acts as a facilitator or conduit in the acquisition of criminal history information from the Federal Bureau of Investigation (FBI). Its clients are banks that want to know if applicants for employment have criminal records. The FBI has criminal history information on file, but will release this information only to a state or federal agency, the actual person to whom the information relates, or an authorized channeling agency that has obtained permission to make the request from the person about whom information is sought. Petitioner states that it is an authorized channeling agency. The FBI provides the information via an electronic data file. Petitioner is expressly prohibited from viewing the contents of files and from incorporating any part of the files into reports furnished to third parties.

A typical transaction commences with a bank obtaining personal information from an applicant for employment. The bank takes the applicant's fingerprints and has the applicant execute a written authorization to obtain the applicant's criminal history records from the FBI. The bank electronically transmits images of the fingerprints and authorization form to Petitioner, which then transmits these electronic files to the FBI. The FBI uses the submitted fingerprints to confirm that the person whose prints are submitted is the person whose criminal history record is sought. The FBI transmits the results of the criminal history records check in an electronic data file to Petitioner, which immediately forwards it to the requesting bank. At no time does Petitioner review the contents of the file. Petitioner also does not supplement the information contained in the file received from the FBI. Petitioner does not incorporate any part of the files received from the FBI into reports or other documents furnished to a third party. The FBI reviews Petitioner's operations and security controls to ensure that Petitioner is compliant with government rules for the dissemination of criminal records.

Petitioner pays the FBI a standard fee for processing a request for a criminal history record. Petitioner's invoice to its customer will contains two itemized charges. The first is the amount paid to the FBI for processing requests for records. The other is Petitioner's standard fee for acting as a conduit in obtaining criminal records from the FBI.

Analysis

Petitioner is providing a service that is not subject to sales tax. Petitioner merely facilitates the processing of a request for criminal history record made to the FBI by its customer and acts as a conduit for the transmission of criminal history record from the FBI to the customer without examining the content of the record.

DATED: July 22, 2014

/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.