

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

TSB-A-14(2)S
Sales Tax
January 23, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S130102A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether sales of “Certificates of Authenticity” (Certificates) pertaining to pieces of jewelry manufactured by Petitioner are subject to New York State sales and use tax.

We conclude that Petitioner is selling information services, but that the Certificates are personal or individual in nature and, as such, are excluded from the sales tax.

Facts

Petitioner has been designing and manufacturing jewelry since 1940. The jewelry is consigned to wholesale trading partners and sold to the general public. The value of the jewelry, which is derived in part from the gemstones and metals used in the design, is enhanced by verification that the piece was manufactured by Petitioner’s well-known brand. Thus, when an owner of a piece of Petitioner’s jewelry or a prospective purchaser plans to obtain an appraisal of a piece, the owner or prospective purchaser may ask Petitioner to examine the piece and issue a Certificate, a service for which Petitioner charges. The Certificate confirms that Petitioner was the original manufacturer and that the piece has or has not been altered over time. To offer this service, Petitioner maintains a catalog of each piece in its original state at the time it was manufactured and archives of the piece’s history and owner(s) if known. Petitioner’s Certificates are created individually for each customer or potential purchaser and individually for each piece of jewelry. Substantially all of the pieces of jewelry were photographed upon completion. The photographs, the date of manufacture, and the names of the artisans who worked to create the piece are retained in Petitioner’s archives. Petitioner also attempts to trace the ownership of the piece from its original purchase and maintains a database on the chain of custody for each piece. When a customer or purchaser requests a Certificate, Petitioner compares the subject piece with the information in its archives and asks the original artisans, if available, to examine the piece as well, in order to determine authenticity. Because the requests for such a Certificate typically are made many years after the original purchase, the charge for the Certificate generally is for the document only and not connected to a sale of jewelry by Petitioner.

Analysis

New York State and local sales tax is imposed on the receipts from every retail sale of all tangible personal property, unless otherwise exempted, and on the receipts from every sale of certain specified services.¹ Generally, the furnishing of information is an enumerated service subject to sales tax, regardless of the manner of delivery, and includes the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons.² Whether a service qualifies as an information service depends on its primary function, as determined by the nature of the service being sold and on what is being paid for by the purchaser. If the primary function of a service is to provide information, the service as a whole qualifies as an information service.³ Because Petitioner's service primarily provides information to its customers, Petitioner's issuance of the Certificates is an information service that is taxable if no exclusions apply.

One such exclusion is "the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated into reports furnished to other persons"⁴ by the person who collected, compiled, or analyzed such information.⁵ In contrast, an information service generally would be regarded as taxable, if the information conveyed was created or generated from a common database, or compiled from information that is widely accessible.⁶ Likewise, a report that uses or relies on statistical models or historical data, or a report that gathers information from a variety of sources and recasts that information into a report, would be considered a taxable information service,⁷ regardless of whether the reports are customized in some respects to respond to the needs of a particular customer.⁸

The information on Petitioner's Certificates is based on the expertise of the Petitioner, who authenticates each piece of jewelry by comparing its present condition to Petitioner's archives on the piece. The information on the Certificates is provided to the owner or prospective purchaser of the piece of jewelry and is not incorporated into reports furnished to persons other than the person who requested it. Thus, we conclude that Petitioner's Certificates are personal and individual in nature within the meaning of § 1105(c)(1) of the Tax Law. The receipts from the provision of those Certificates, therefore, are excluded from sales tax, provided that the Certificates are not sold in

¹ Tax Law § 1105(a), § 1115, and § 1105(c).

² Tax Law § 1105(c)(1).

³ TSB-M-10(7)S.

⁴ Id.

⁵ 20 NYCRR §527.3(b)(2).

⁶ TSB-M-10(7)S.

⁷ Id.

⁸ *ADP Collision Estimating Services, Inc.*, Tax Appeals Tribunal No. 804973, Aug. 8, 1991; *aff'd* 188 AD2d 245 (3rd Dept., 1993).

conjunction with the performance of any other taxable services and are not performed for a customer in conjunction with the sale of tangible personal property.⁹

DATED: January 23, 2014

/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.

⁹ See *Westwood Pharmaceuticals v. Chu*, 164 AD2d 462 (4th Dept. 1990); TSB-A-03(42)S.