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

TSB-A-15(10)S Sales Tax March 23, 2015

STATE OF NEW YORK COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S121210B

The Department of Taxation and Finance received a Petition for Advisory Opinion from "Petitioner". Petitioner asks whether it is required to charge its clients sales tax for their purchase of news advertorials, which are created by Petitioner and delivered to the clients in an MP3 format.

We conclude that the sales of the news advertorials are not subject to sales tax.

Facts

Petitioner is registered to do business in New York State and has its office in New York City. The company sells radio news advertorials that it creates for American companies that are listed on the New York Stock Exchange and the NASDAQ. A news advertorial is similar to a financial markets advertisement. The news advertorials are aired on various radio stations headquartered in New York and, potentially, the advertorials could be heard nationally.

Petitioner buys air time from radio stations and writes a script for the advertorial. Petitioner then emails the script to an independent producer who prepares an MP3 voice over audio file. The prepared advertorial is then sent back to Petitioner who forwards it to the radio station via e-mail for air time the next day. After the advertorial has been aired on the radio, Petitioner emails the client a copy of the MP3 audio file for the client's records.

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. See Tax Law §§ 1105 and 1115. One of the services subject to sales tax is the furnishing of information. See Tax Law §§ 1105(c)(1), 1105(c)(9). The creation and sale of the advertorials qualifies as the furnishing of information, which is an enumerated service. Tax Law § 1105(c)(1), however, excludes "the services of advertising or other agents or other persons acting in a representative capacity..." Section 527.3(b) of the Sales and Use Tax Regulations provides, in part, as follows: "[f]ees for the services of advertising agencies or other persons acting in a representative capacity are excluded from the tax. Advertising services consist of consultation and development of advertising campaigns, and placement of

advertisements with the media without the transfer of tangible personal property." 20 NYCRR § 527.3(b) Because Petitioner develops the ads and places them with radio stations, Petitioner's service constitutes advertising that is not subject to sales tax.

DATED: March 23, 2015

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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.