

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 [REDACTED] “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

