

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

TSB-A-15(16)S
Sales Tax
May 7, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140114A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] "Petitioner". Petitioner asks whether various services it provides are subject to sales tax.

We conclude that Petitioner's main services (fraud management service, profile builder service, and managed services) are subject to sales tax as protective services covered by Tax Law § 1105(c)(8). Petitioner's charges for chargeback management service and payment gateway service are not subject to sales tax. Petitioner's implementation services, fraud consulting services, and customer support services may be subject to sales tax depending on the specific nature of the work and the terms under which the service is provided.

Facts

Petitioner provides a variety of services, described below, to its customers. In most cases, the charges for each of Petitioner's services are separately stated on invoices and other documents.

Fraud Management Service

Petitioner's primary service is a "fraud management" product offered to merchants that are seeking information as to the fraud risks associated with the credit cards that are being used to purchase goods from the merchants. Basically, Petitioner provides its customer, the merchant, with information as to the risk of credit card fraud for a specific sales transaction, so that the merchant can decide whether it should complete a proposed purchase to be made over the Internet with a credit card. The information is in the form of a numeric value that is based on parameters selected by its customer.

Petitioner's customer submits to Petitioner, through the Internet, information about a proposed credit card transaction, such as the credit card number, credit card expiration date, issuing bank, credit card customer's IP and email address, amount of purchase, and time of purchase. Petitioner's computer system contains historic data on its customer's past sales including those involving use of fraudulent credit cards and may also contain similar information pertaining to other merchants that are Petitioner's customers. Petitioner's customer sets the rules used to determine when a credit card should be rejected because of fraud or identity theft risk and assigns the weight accorded each rule. That is, the rules reflect the customer's specific risk

tolerance in accepting a payment by credit card. Petitioner will, for an additional fee, help develop more detailed and advanced fraud fighting strategies. The customer's rules are inputted to Petitioner's computer system, which then employs proprietary software, customer data and third party data to determine whether the risk of credit card fraud for a specific transaction is greater than Petitioner's customer deems acceptable.

Profile Builder Services

As part of the fraud management services provided by Petitioner, customers may also purchase profile builder services. Under these services, Petitioner uses additional data provided by the merchant to improve the quality of the fraud management service. This service can be purchased only in conjunction with the purchase of Petitioner's main fraud management service.

Managed Services

Managed Services involve manual review by Petitioner's staff of credit card transactions. Petitioner's employees screen transactions that have been set aside for manual review based on the merchant's rules and risk tolerance to determine if there is a risk of fraud. Petitioner uses third party information, such as physical address look-up sites, in its manual analysis of fraud risk. It electronically communicates the results of its analysis to its customer. As part of this service, Petitioner's staff continually reviews the customer's risk tolerance rules and configurations for changes that can improve fraud screening. Petitioner's customers have the option of performing their own manual reviews of credit card transactions.

Implementation Services

Petitioner provides services to merchants to implement Petitioner's services, and, solely at the merchant's instructions, to integrate Petitioner's service with data verification products and other services provided by third parties. Petitioner also creates rules to convert database entries into a format that it can use. Depending on the third party, Petitioner's implementation services can be provided for free or for a charge, which may be paid by the merchant to the Petitioner or paid by the merchant directly to the third party providing the service to the merchant. When Petitioner implements its offerings for a merchant, the parties work together to develop an initial set of fraud screening rules that the merchant can alter on an ongoing basis as fraud trends and merchant needs change.

Fraud Consulting Services

Petitioner provides fraud consulting services to its customers. This service entails certification and training of a merchant's employees on fraud risk and management, periodic performance reviews and optimization of Petitioner's services as used by a customer, and risk analysis specific to the merchant or the merchant's industry.

Chargeback Management Services

Chargeback management services allow Petitioner's customers to manage the inquiry and chargeback process for all major payment brands. In some instances, the charge billed to a credit card account must be reversed due to fraud, an unintended charge, or failure of the delivery of goods. A chargeback inquiry is initiated by the issuing bank of a credit card, which seeks to have the charge reversed. The merchant then reviews the inquiry to determine if there is a dispute. Petitioner's chargeback management services increase the efficiency of the review of these inquiries by allowing a merchant to review data related to an inquiry quickly and to automate parts of the review of the inquiry. Credit card processors transmit chargeback inquiries and the information related to those inquiries to Petitioner. Merchants then use Petitioner's services to access the inquiry information over the Internet and determine whether to accept the inquiry and then respond accordingly. The merchants typically review each inquiry individually and make a determination manually. Once the merchant has responded, Petitioner transmits the information over the Internet back to the credit card processors.

Payment Gateway Services

These services provide merchants with a single, reliable and secure end-to-end solution for global payment processing of all major payment brands. The gateway is hosted by a third party and provided by Petitioner to its customers as a "white-label" offering (i.e., the gateway is the third party's but appears to merchants to be the Petitioner's gateway). The payment gateway services allow merchants to authorize, approve, void, and reverse credit card purchases made by various credit card brands. Petitioner accesses the services over the Internet to complete an initial set up. Petitioner can also generate reports based on data used in the processing, but the merchants have very little interaction with the services on a daily basis. Once the configuration is complete, the merchant sends data over the Internet to Petitioner regarding the merchant's credit card transactions. A third party routes and exchanges this information on behalf of Petitioner with credit card processors over the Internet to process the credit card transactions. Petitioner ensures that the data sent by merchants is compatible with the data and databases used by the credit card processors.

Customer Support Services

Petitioner provides customer support services for its offerings. Customers may pay different fees for different tiers of service. For example, tiers of service with higher fees may offer longer hours of live support.

Analysis

Tax Law §1105(c)(8) imposes sales tax on the receipts for
[p]rotective and detective services, including, but not limited
to, all services provided by or through alarm or protective
systems of every nature, including, but not limited to, pro-
tection against burglary, theft, fire, water damage or any

malfunction of industrial processes or any other malfunction of or damage to property or injury to persons,...

Under the rules of statutory construction, words and phrases used in a statute generally should be given their ordinary meaning and a tax law should be interpreted as an ordinary person reading it would interpret it. *People v. Cruz*, 48 NY2d 419 (1979); *SIN, Inc. v. Department of Finance of City of New York*, 126 AD2d 339 (1st Dept., 1987); McKinney's Statutes §3232. Thus, protective services and protective systems of every nature should include services intended to protect the person or entity purchasing them from danger or risk. In this instance, Petitioner is providing a protective service subject to sales tax under Tax Law § 1105(c)(8) when it provides a merchant with information or advice pertaining to the risk of credit card fraud for specific transactions. Any ongoing service whose function is to detect or prevent theft or fraud is a protective service for purposes of § 1105(c)(8). Fraud detection or prevention includes providing a risk assessment of credit card fraud for specific transactions. Petitioner's receipts for its protective services are subject to New York sales tax if its customer is located in New York.

The tax treatment of the Petitioner's specific services is set forth below.

Fraud Management Service

Petitioner's primary fraud management service is subject to sales tax as a protective service. Petitioner provides under this service a risk assessment of credit card fraud for specific transactions. Irrespective of whether the risk analysis consists of an explication of the fraud risk or just a numeric value, the purpose of the analysis is to detect potential fraudulent use of credit cards and thereby prevent Petitioner's customer from being a victim of fraud.

Profile Builder Services

Petitioner's profile builder service is subject to sales tax as a protective service. It is an add-on or a supplemental component of Petitioner's fraud management service, intended to improve the quality of the fraud management service. It is only available to purchasers of the fraud management service. Therefore, profile builder service has the same sales tax status as the fraud management service.

Managed Services

Petitioner's managed service is subject to sales tax as a protective service. Basically, Petitioner performs manually the same type of service that its primary fraud management service performs automatically solely through the use of computer analysis. Petitioner provides under this service a risk assessment of credit card fraud for specific transactions. Therefore, the service qualifies as a protective service for purposes of sales tax.

Implementation Services

The sales tax status of Petitioner's implementation services depends upon the sales tax status of Petitioner's other service that is being integrated with a third party service. If the implementation fee is billed to the customer of the base service, the fee is a component or expense of the base service being provided by Petitioner; therefore, the implementation service will have the same sales tax status as the base service. *Cf* TSB-A-89(38). Thus, if Petitioner's other service is subject to sales tax as a protective service and the customer of this other service pays the implementation fee to Petitioner, the fee is subject to sales tax. For example, if Petitioner provides implementation service in conjunction with its fraud management service, the implementation fee is subject to sales tax. On the other hand, the implementation fee is not subject to sales tax if it is provided in conjunction with another service sold by Petitioner that is not subject to sales tax.

Fraud Consulting Services

In general, consulting and training services are not subject to sales tax. *See* TSB-A-92(31)S; TSB-A-09(33)S. This general rule applies to security consulting services. *See* TSB-A-90(2)S. However, this general rule is subject to several qualifications. Any charge for consulting or training that is a compulsory component of a taxable protective service is itself subject to sales tax under Tax Law § 1105(c)(8). *See* TSB-A-10(32)S; TSB-A-07(28)S, *see also* TSB-A-03(11)S. That is, consulting or training services are not subject to sales tax only if they are optional services. In addition, services that are denominated as consulting may be subject to sales tax if they are integral to a taxable protective service. For example, if petitioner charges a customer for advice on developing or modifying the risk parameters that are used in the provision of Petitioner's main fraud management service, the charge for advice itself would qualify as protective service subject to sales tax. Finally, a service provided on an ongoing basis to regularly monitor a customer's business in order to identify ways to reduce fraud qualifies as a protective service even if the charge for the service is denominated as consulting. In summary, optional charges for advising a customer on a non-ongoing basis on how to reduce fraud are not subject to sales tax, provided that the advice is not specific as to how to use a taxable protective service provided by Petitioner.

Chargeback Management Services

The chargeback management service is not subject to sales tax. The service merely facilitates data processing related to the chargeback process. Petitioner does not provide an assessment of fraud risk or otherwise detect or prevent fraud as part of this service.

Payment Gateway Services

The Payment Gateway service is not subject to sales tax. While this service does involve telecommunications, which might be subject to sales tax under Tax Law §1195(h)(1) this telecommunication component is ancillary to the data processing service that Petitioner provides in ensuring that the data the customer is transmitting is in a very specific format that will be intelligible to the recipient.

Payment Gateway service is not subject to sales tax under Tax Law § 1105(c)(8) because the enabling of secured transmissions is not a protective service.

Customer Support Services

The sales tax status of Petitioner's customer support services depends upon the sales tax status of Petitioner's other service for which customer support is being provided. Providing guidance on an ongoing basis on how to maximize use of a protective service is itself a component of the protective service. Therefore, customer support services provided in conjunction with taxable protective services are themselves subject to sales tax under Tax Law § 1105(c)(8).

DATED: May 7, 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.