

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

TSB-A-15(3)S  
Sales Tax  
March 18, 2015

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120627A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether various services it provides are subject to sales and compensating use taxes in New York State.

We conclude that Petitioner's services are not subject to sales and compensating use taxes in New York State.

**Facts**

Petitioner is headquartered in another state but has provided registered agent services in New York through its wholly-owned subsidiary since 2009. Petitioner provides a variety of products and legal-related services through an on-line platform. Petitioner's website directs customers to get help from an attorney participating in one of its legal plans if they have legal questions. All of the services provided by Petitioner require information to be provided by the customer. A customer who is interested in purchasing a specific service will access the website and either read through the explanatory information or call a specialist employed by Petitioner for assistance. The customer will provide his or her information to a specialist by phone or through the Petitioner's website. If the customer chooses to provide the information through the Internet, the customer will fill out an on-line questionnaire. All of the information collected by phone or through the Internet is then reviewed to determine the appropriate next steps to complete relevant documents and determine action steps necessary to facilitate the goal for which the service was purchased (i.e., incorporating a business, completing a trademark application or a last will and testament). Generally, three specialists are available to each customer. The first specialist provides customer service at inception to answer questions regarding the best service to purchase for an individualized set of needs. A second specialist is assigned to the customer's account to provide specific services with regard to completion and consistency review of necessary documents. A third specialist is made available to customers after the service is provided to address questions or follow up on any issues. Petitioner also provides expedited processing, if requested by the customer, to support the services it provides.

The following are service offerings provided by Petitioner to customers located in New York:

(1) Preparation and review of estate planning documents:

Petitioner completes and reviews customers' estate planning documents, including documents such as a last will and testament, a living trust, and an advance medical directive. To purchase any one of these services, the customer provides answers to questions on Petitioner's website or via phone. Petitioner downloads or inputs the information gathered from the customer into Petitioner's own proprietary software to complete a preliminary document which is then subjected to a rigorous review by one of Petitioner's specialists and supplemented through discussions between the specialist and the customer. However, the customer does not have access to Petitioner's software. Rather, Petitioner's employees input or download the customer's information to Petitioner's software. Each customer is provided with a copy of all documents generated and completed. Petitioner charges a flat fee for this service. A higher flat fee is charged if the customer requires that the service be completed within 48 hours.

(2) Entity formation service (formation of business entities such as: "C" or "S" corporations, limited liability companies, non-profit corporations, etc.):

A customer purchasing this service provides information regarding the entity he or she wants to form and Petitioner uses this information to begin the process of completion of the entity formation documents in the customer's desired jurisdiction. As part of this process, Petitioner checks for the availability and use of the entity name with the appropriate government agency and cross-checks the information provided by the customer against official government records to ensure there will be no conflict when any documents are filed with that agency.

Petitioner maintains constant communication with its customer throughout this process to ensure that all information needed or requested to form an entity is consistent and complete. Petitioner completes all official documents on appropriate forms and files the documents, as necessary, with the appropriate state or other government agency. After the government agency approves the filing, Petitioner provides the customer with proof of filing and a copy of all the documents as a matter of record for the customer's purchase. As part of these services, Petitioner also collects and pays the governmental filing fees. These services are offered to customers for a base price. Second tier pricing includes completion of the above-referenced entity formation services in an expedited time frame. Third tier pricing includes all of the above-referenced services and the following: completion of an application for a Federal Employer Identification Number (FEIN) and the filing and obtaining of the FEIN application with the Internal Revenue Service; completion and filing of paperwork necessary to make an S-Corporation election, if appropriate; expedited mailing services; on-line access to additional, miscellaneous business forms; and a one-month free trial subscription to a business or personal legal plan whereby legal consultations, guidance and advice are available to the customer by an attorney from a participating network law firm related to the customer's business operations or

personal legal matter (see (5) Legal Plan Service below for further details of this service). Additionally, as part of the third-tier pricing, the customer receives a binder to hold the documents, blank corporate certificates, a corporate seal, and free access to on-line, third-party software. Petitioner does not pay for the third-party software and the trial period varies from thirty days to three months.

(3) Registered agent service:

As a separate service related to the entity formation service, Petitioner, through a wholly-owned subsidiary, offers a subscription-based, registered agent service in New York. In exchange for a flat fee, Petitioner provides a designated agent for companies to use when incorporating a business in the state, as well as for any ongoing functions of a registered agent as required under state law.

(4) Trademark and copyright services:

Petitioner provides services related to obtaining trademarks and copyrights. With respect to any applications filed with the appropriate governmental agencies, Petitioner performs the following services: it reviews the customer's information; checks for omissions of necessary information; contacts the customer with requests that the customer provide any omitted or incomplete information; adjusts the trademark specimens; performs checks to ensure that there are no conflicting trademarks or copyrights, completes the application and electronically files the application with the appropriate federal agency, and pays the appropriate fees. Petitioner then provides its customer with a copy of the filed trademark or copyright application as proof of service. The price charged covers all services related to the application, with a higher price charged for expedited service.

(5) Legal Plan Service:

Petitioner offers a monthly subscription to a legal plan service whereby a customer may obtain legal consultation and advice from an independent attorney in a participating law firm. Petitioner pays a monthly fee to participating law firms to provide legal services to Petitioner's customers. The legal plan services also include as part of the subscription unlimited access to downloadable forms from Petitioner's website. Legal plan services are available in two types of subscriptions, related to either the general business operations or the personal needs of the customer. Customers are charged on a flat-fee, subscription basis, with the first month generally being a free-trial period and monthly paid renewals thereafter if the customer chooses to renew.

## **Analysis**

While the receipts from retail sales of tangible personal property are subject to sales tax, except as otherwise provided (Tax Law § 1105[a]), services are not generally subject to sales tax

unless they are specifically enumerated in the Tax Law. Tax Law § 1105(c)(1) provides that the receipts from every sale, except for resale, of the following services are subject to tax:

The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspaper, electronic news services, radio broadcasters and television broadcasters in the collection and dissemination of news, and excluding meteorological services.

In addition, Tax Law § 1105(c)(9) provides that an information service furnished, provided or delivered by means of telephony, or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature is also subject to sales tax. The Department has also explained in guidance:

As a general rule, furnishing information created or generated from a common database, or information that is widely accessible is a taxable information service.

...

Whether a service qualifies as an information service depends on its primary function. The fact that one element of a service is an information service does not mean that the service as a whole is taxable as an information service. The Tax Department will determine a service's primary function based on an examination of the service being sold and what is being paid for by the purchaser. . . . If a customer's chief purpose in paying for a service is to receive information from that service . . . the service as a whole qualifies as an information service.

TSB-M-10(7)S.

We consider each of Petitioner's services separately.

(1) Preparation and review of estate planning documents:

Petitioner prepares estate planning documents, such as wills and health care proxies, using its customers' information and its own proprietary software. While Petitioner collects information from its customers and may perform some analysis of the information provided to determine some of the language to include in the documents, it is not providing information to its customers. Petitioner's customers are paying for personalized documents, not information. Moreover, converting information already in the customer's possession from one form or medium to another, without interpreting or recasting it, so that the form of the information changes but not the intelligence contained therein, does not constitute an information service. *Finserv v. Tully*, 94 AD2d 197 (3d Dep't 1983), *aff'd*, 61 NY2d 947 (1984). Petitioner's estate planning document preparation service uses the information provided by the customer and incorporates it into estate planning documents. It does not alter the information provided by the

customer. Therefore, this service would not be considered an information service subject to sales or use tax.

Neither does the service constitute the sale of prewritten software. Petitioner's customers do not access the software. Rather, Petitioner's employees download or input the customer's information into the software in order to generate estate planning documents. However, Petitioner may be subject to use tax on the software if it is used by Petitioner's employees within the State. If the software was written or created by Petitioner, the consideration for purposes of the use tax would be the price at which Petitioner sells the software in the ordinary course of business or, if not so sold, the consideration paid for the blank medium, such as disks or tapes, used in conjunction with the software. *See* Tax Law § 1110(g). If the software is not reduced to tangible media, the consideration on which the use tax would be calculated is zero. *See* TSB-A-13(30)S.

(2) Entity formation service:

As part of the service, the availability and use of a name is checked against the records of the appropriate government agency and proof of filing is provided which suggest elements of an information service. However, the primary function or purpose of this service is to create a business or non-profit entity for Petitioner's customer by preparing and filing the appropriate documents with the proper government agency. Therefore, the entity formation service as a whole would not be subject to sales tax as an information service, even though the service may have elements that could be individually subject to sales tax. *See Matter of SSOV'81 Ltd. d/b/a/ People Resources*, Tax Appeals Tribunal, 1995. However, Petitioner's purchase of the use of such databases may constitute the purchase of a taxable information service if used or accessed by Petitioner's employees within New York State.

At the third pricing tier, the customer also receives, among other services, a binder to hold its documents, blank corporate certificates, a corporate seal, and free access to on-line software provided free of charge by third parties for a minimum period of time. These items constitute tangible personal property. However at the pricing tier in question, the primary function of Petitioner's service remains entity formation. Thus, we conclude that these items of tangible personal property are used by Petitioner in the course of providing its service. Petitioner must pay sales or use tax on purchases of tangible personal property purchased or used within the State (except for the third-party on-line software that is provided free of charge to Petitioner's customers), and may not claim a resale exemption for such purchases or uses.

(3) Registered agent service:

Petitioner's registered agent service includes providing a designated agent for incorporating a business within the State and other functions required by State law (e.g., receipt of service). This is not one of the services subject to tax under Tax Law § 1105(c). Therefore, Petitioner's receipts from this service are not subject to sales tax.

(4) Trademark and copyright services:

This service includes all aspects of obtaining a trademark or copyright, including performing checks for completing copyrights or trademarks, filing applications and obtaining the copyright or trademark from the appropriate entity. Although Petitioner may consult databases in the course of checking for conflicting trademarks or copyrights, we conclude that Petitioner is not providing an information service, because the primary function of this service is to assist customers in obtaining a valid trademark or copyright. However, similar to the Entity Formation Service, any purchase by Petitioner for the use of any databases to perform this service may constitute the purchase of a taxable information service if used or accessed by Petitioner's employees within New York State.

(5) Legal Plan Service.

Petitioner's sales of subscriptions to legal plan services so that its customers can obtain legal advice for various issues is not subject to sales tax, because legal services are not among the services subject to sales tax.

DATED: March 18, 2015

/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.