

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

**ADVISORY OPINION**

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether two online services it sells relating to government requests for proposals are subject to sales tax. We conclude that Petitioner's Procurement Service is nontaxable, but that its Notification Service is taxable as an information service.

**Facts**

Petitioner sells two automated services related to government request for proposals (RFPs).

The first is its Procurement Service. This service automates government contract procurement formulation and distribution on behalf of federal, state, municipal, and county governmental entities. Specifically, a governmental customer creates RFPs by accessing its account on Petitioner's website. When the RFP is complete, Petitioner releases it for distribution to potential bidders, including through its own RFP notification channel described below. In response to the RFP notification, governmental contractors then submit "Proposals" through Petitioner's website. The governmental customer is able to access Petitioner's website to review, compare, and decide between the Proposals, using the functionality of Petitioner's proprietary system. Petitioner's website advertises that the principal benefits that governmental customers will realize from using the service are "[a]ccess to almost 1 million motivated, qualified suppliers from a single location" and "[i]ncrease[d] competition for improved pricing and services."

Petitioner's Notification Service enables Petitioner's contractor customers to identify, respond to, and potentially win more bid opportunities. Petitioner provides government contract notification services to small, medium and large government contractors by constantly monitoring all known government RFP releases and inputting them into its database via automated and manual inputs. Based on the capabilities, geographies, qualifications and other criteria, these customers are notified via email of potentially applicable RFPs. Contractor customers may access Petitioner's online servers to obtain full details of the RFPs that interest them. Contractor customers may submit their bids using Petitioner's website. These customers may also call and consult with Petitioner's representatives to obtain further assistance and consultations on the bid process.

Petitioner sells four levels of its Notification Service, one free level and three paid levels. The free level includes information about RFPs issued only by Petitioner's Procurement Service partners, i.e., those governmental entities that use Petitioner's Procurement Service. The three

levels of paid service differ from each other only in the size of the database of bid opportunities that the service provides.

## Analysis

The Tax Law imposes sales and use tax on retail sales of tangible personal property, including prewritten software, and the sale, except for resale, of certain services. *See* Tax Law §§ 1101(b)(6); 1105(a), (b), (c). One of the services enumerated for taxation are information services, except for “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. *See* Tax Law § 1101(c)(1), (9).

The primary function of Petitioner’s Procurement Service appears to be to provide government customers with an ability to distribute their RFPs to a wide audience of contractors in order to increase the number of competitive bids that they receive. That is not one of the enumerated services and is thus not taxable.

The primary function of Petitioner’s Notification Service is to provide contractor customers with a database of information about RFPs on which they might want to bid. Such a service constitutes an information service. *See* Tax Law § 1105(c)(1), (9). It is a taxable information service because the exclusion for “personal or individual” information does not apply, given that the information is derived from a common database. *See Matter of ADP Automotive Claims Service Inc.*, 188 AD2d 245, 248 (3d Dep’t 1993) (information services derived from a common source or a data repository that is not confidential and is widely accessible is not personal or individual in nature); TSB-M-10(7)S (listing “employment databases” as one of the services subject to tax as an information service).

DATED: October 27, 2020

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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.