



Advisory Opinion: TSB-A-20(73)S

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (“Petitioner”) inquiring as to the taxability of Petitioner’s urgent response medical monitoring services and whether Petitioner’s customers are subject to any New York State and local taxes on those services.

We conclude that Petitioner’s receipts from the sale of its urgent response medical services are exempt from sales and use tax and that Petitioner’s customers are not subject to other State and local taxes on mobile telecommunication services based on their use of these services.

Facts

Petitioner offers an “urgent response medical device” (URMD) that is equipped with a push button, microphone and speakerphone, and provides access to an “Urgent Response Medical Service” (URMS). The URMS is a monitoring service that provides access to the Petitioner’s call center, which then can direct help to the device owner. When the button is pressed, or the device detects an owner’s fall, the owner is connected to the Petitioner’s call center through a nationwide cellular network, and the device enables a two-way conversation with the call center operator. Call centers are located outside of New York. The call center then may contact local emergency responders. Alternatively, if the button is pushed and held, the device will connect the owner with local 911 operators. The device cannot connect with any person other than Petitioner’s call center or local 911 operators and cannot function as a cell phone. The URMD also is equipped with GPS technology to locate the URMD owner in case of emergency. The device is purchased up front. The URMS is sold for a monthly fixed price that is billed in advance.

Petitioner asks whether its charges to its customers for use of the URMS are exempt from sales tax under Tax Law § 1115(r) as receipts from the sale of alarm call services and whether use of the URMS subjects its customers to various taxes on telecommunication services, including State and local sales and use taxes, the State sales tax imposed by Tax Law § 1109 within the Metropolitan Commuter Transportation District (MCTD), the telecommunications excise tax imposed by Tax Law § 186-e, and the public safety communications surcharge imposed by Tax Law §§ 186-f and 186-g.¹

¹ Petitioner also asks about the applicability of the local gross receipts taxes on utility and telecommunications services imposed pursuant to the authority of the Village or General City Laws. These taxes are not administered by the Department; therefore, we are not opining on them. The petition also referenced the local enhanced emergency telephone system surcharges on mobile telecommunication services imposed pursuant to the authority of Article 6 of the County Law. Prior to December 1, 2017, those taxes were similarly not administered by the Department. However, they were repealed effective on that date and replaced with the authorization to impose a local wireless communications surcharge in (Tax Law § 186-g), which the Department administers.

Analysis

We conclude that Petitioner's URMS qualifies for the exemption in Tax Law § 1115(r). Tax Law § 1105(c)(8) imposes State and local sales taxes on the receipts from provision of protective and detective services "of whatever nature." Petitioner's URMS connects to Petitioner's call center or to the local 911 system and enables the owner to receive urgent medical attention when needed. The GPS component allows Petitioner to locate the URMD owner in an emergency. These services are in the nature of protective services. However, Tax Law § 1115(r) exempts the receipts from the sale of alarm call services designed specifically to respond to medical emergencies from State and local sales taxes, including the tax imposed by Tax Law § 1109 within the MCTD. See TSB-A-97(37)S; TSB-A-95(34)S; TSB-M-94(3)S. The exemption does not apply to the sale of any tangible personal property, such as the URMD, sold in conjunction with the service. Petitioner must collect State and local sales taxes on sales of the URMD.

We conclude that Petitioner's URMS is not a mobile telecommunication service for purposes of State and local sales taxes (including the tax imposed by Tax Law § 1109), the telecommunications excise tax imposed by Tax Law § 186-e, the public safety communications surcharge imposed by Tax Law § 186-f or the wireless communications surcharges authorized by Tax Law § 186-g. The URMS does not enable Petitioner's customers to make or receive wireless telephone calls. The URMS only allows a customer to connect directly with Petitioner's call center or, if the activation button is depressed and held, to a 911 operator. In TSB-A-09(50)S, we concluded that the vendor of an in-vehicle emergency assistance service was not selling telecommunications services to its customer. Instead, the vendor was the purchaser and consumer of the telecommunications services it used to provide the emergency assistance service. See *also* TSB-A-97(37)S. Accordingly, Petitioner's charges to its customers for URMS are not subject to State and local sales taxes (including the tax imposed by Tax Law § 1109), the telecommunications excise tax imposed by Tax Law § 186-e, the public safety communications surcharge imposed by Tax Law § 186-f or the wireless communications surcharges authorized by Tax Law § 186-g. Petitioner is not required to collect State or local sales tax, the public safety communications surcharge or the wireless communications surcharges from its customers on sales of its UMRS. Similarly, it is not required to pay the telecommunications excise tax on the gross receipts from sales of the UMRS to its customers.

Because we conclude that Petitioner's UMRS is not a mobile telecommunication service, Petitioner is not a vendor or provider of telecommunication services for purposes of State and local sales taxes, the telecommunications excise tax, the public safety communications surcharge or the wireless communications surcharges. Although the Advisory Opinions cited above involve sales tax, an entity that is not selling telecommunications for sales tax purposes would not be considered a provider of telecommunication services for purposes of the telecommunications excise tax, the public safety communications or the wireless communications surcharges. Accordingly, Petitioner is not a provider of telecommunication services for purposes of those taxes. Rather, it is the purchaser and consumer of the mobile telecommunications services it uses to provide the URMS to its customers. Petitioner is not

reselling mobile telephone services for purposes of State and local sales tax or the telecommunications excise tax, and may not claim a resale exemption from those taxes on its purchases of mobile telecommunications from its provider.

DATED: October 13, 2020

/s/

DEBORAH R LIEBMAN
Principal Attorney

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.