

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). Petitioner asks whether the coupon clearing products it sells to advertisers that issue discount coupons and the retailers that accept them are subject to sales and use tax.

We conclude that the products are not subject to sales and use tax.

**Facts**

Petitioner provides coupon clearing products for discount coupons redeemed at retail stores located in New York State. Petitioner's customers are the retailers who redeem those coupons and the advertisers whose product or service is subject to the discount offered via the coupon. Petitioner does not design, print, or distribute coupons. Instead, Petitioner's customers engage Petitioner to manage coupon information and the monetary transactions connected with the redemption of physical and electronic coupons by consumers. An advertiser will contract separately with a third party to place the advertiser's coupons in newspapers, direct mail, and other tangible advertising media distributed in the State, as well as on Internet websites, mobile applications, and other electronic distribution platforms accessible via computers and mobile devices.

The practice of redeeming coupons at a retailer's point of sale requires the retailer to provide a discount to its shopping customer against the selling price of a product and to perform various administrative functions as required to obtain reimbursement of that discount from the advertiser. Per industry practice, an advertiser is required to reimburse the retailer for the discount and to pay the retailer one or more fees for the administrative burden imposed on the retailer. Almost all retailers and advertisers use a coupon clearinghouse as a "middle-man" to manage the data flowing between the retailer and the advertiser and to facilitate the payment of the monies owed by the advertiser to the retailer. Petitioner is a coupon clearinghouse that facilitates the flow of data and funds for its customers. Each of Petitioner's customers must enter into a written agreement for its coupon clearing products that explicitly establishes a formal agency relationship between Petitioner and the customer. This agency relationship is disclosed to all retailers and advertisers with whom Petitioner interacts on behalf of the customer. Further, standard industry practice ensures that all parties interacting with Petitioner recognize that Petitioner is a formal agent on behalf of its customer.

When Petitioner receives a batch of coupons from a retailer, Petitioner typically performs the following services as part of its coupon clearinghouse products (except that items 3 through 5 do not apply to retailer customers):

1. Receipt and separation of coupons;
2. Manual scanning of coupons into Petitioner's production system;
3. Manual review of coupons for fraud prevention;
4. Automated analysis of coupons by Petitioner's system to support fraud prevention;
5. Automated application of advertiser payment policies (regarding coupon expiration dates and redemption exceptions);
6. Destruction of the physical coupons after processing;
7. Transmission of coupon data to Petitioner's servers for storage; and
8. Tabulation of payments owed by advertisers to retailers, transmission of the required funds to retailers, and management of an advertiser's on-going funding requirements.

In performing the above services, Petitioner populates databases within its production systems with the offer and coupon data obtained from scanning and validating the coupons submitted by the retailers. All scanning activities occur outside New York and the servers on which the data is stored are located outside the State.

After Petitioner has compiled a customer's information in its databases, Petitioner will provide the information to the customer and may provide some or all of the customer's information to the customer's designees. In addition, Petitioner aggregates the customer information and may provide certain categories of the aggregated information (stripped of any customer name or other customer-specific detail) to third-parties, including other advertiser customers. Petitioner also may use its customers' aggregated data in performing discrete analytics for a customer, which are typically contracted and billed separately from Petitioner's standard coupon clearing fees. Petitioner is not inquiring about the taxability of these analytical services.

Petitioner's standard coupon clearing product for advertisers includes a certain level of fraud protection, as shown in the above list, including verifying, through the Internet, that a retailer submitting coupons actually exists. Petitioner also contracts with a third-party service provider to make field visits to retail stores submitting coupons through its service to verify that the retailers actually exist and that their product mix includes those products for which the retailers have submitted coupons. Petitioner bills its advertiser customers separately for these services, but these services are not optional.

As part of its products, Petitioner provides each customer with access to prewritten software created by Petitioner that enables the customer to run various reports to view the coupon and payment data applicable to the customer. The software does not allow the customer to add, edit, or delete data. A customer may import reference data (such as division number or general ledger account number) into a limited set of fields to align with Petitioner's data, but Petitioner must upload the data on behalf of the customer. While most of the software's reports

are standard, the software does allow the customer to select from a set of standard fields in order to display certain fields or alter the arrangement of the fields in a given report.

Petitioner's software for advertisers supports certain promotion planning analyses and also contains a budget management function, which is the only function that allows customers to define and perform calculations. If the advertiser has insufficient data from its prior coupon programs to support these analytics, Petitioner's software will supply comparative data in the form of aggregated data derived from other customers in the product category being analyzed by the customer, as discussed above. This combined software/data offering is separately charged on the invoice to the advertiser, but is mandatory. This offering is not available to retailer customers.

Customers cannot download the software and Petitioner does not provide tangible or electronic copies of the software to its customers. Instead, the customer uses its own web browser to access a URL that allows the customer to access the software by entering a password. Petitioner's software is hosted on servers located outside New York State and Petitioner has exclusive control over the servers and the software code. Petitioner gives its customers a nontransferable, nonexclusive, revocable, and limited right to access and use the software. Petitioner provides each customer with a copy of the license, but does not require its customers to sign the license agreement. Petitioner can identify and update the geographic location of each software user, meaning that Petitioner can identify the number of software users in New York versus software users everywhere.

Petitioner charges both its advertiser and retailer customers a bundled base service fee that covers the items listed above. Petitioner does not charge retailer customers anything for the prewritten software that it provides them, but does charge advertiser customers a separate monthly usage fee for its prewritten software/data product. Petitioner does not sell the prewritten software, prewritten software/data products, or its fraud prevention services except as part of the coupon clearance services discussed above.

### **Analysis**

The Tax Law imposes sales and use tax on retail sales of tangible personal property (including prewritten software), as well as on sales, except for resale, of certain enumerated services. Among the taxable services are information services (Tax Law § 1105[c][1] and [9]), and protective services (Tax Law § 1105[c][8]). Integrated services are to be taxed according to their "primary function." *See Matter of SSOV '81 Ltd.*, Tax Appeals Tribunal, January 19, 1995.

The primary function of the coupon clearing product that Petitioner sells to its retailer customers is the service of processing the coupons and obtaining payment from the advertisers that issued the coupons. This is not a taxable service. *See* Tax Law § 1105(c); TSB-A-15(20)S. As part of that product, Petitioner provides its retailer customers with prewritten software with limited functionality. That prewritten software is an incidental part of the service Petitioner is selling to its retailer customers and thus does not render that service taxable.

The product Petitioner provides to its advertiser customers has a number of components. In addition to processing the coupons to determine how much the advertiser customer owes the retailers that redeemed the coupons, Petitioner provides “fraud prevention services” that aim to ensure that the coupons submitted by the retailer to Petitioner were accepted by the retailer as part of a legitimate retail sale of the advertiser’s product. Petitioner also provides each advertiser customer with data derived from Petitioner’s processing of the advertiser’s coupons, along with benchmark data derived from coupon data aggregated anonymously from all of Petitioner’s advertiser customers, and prewritten software with which to do promotion planning analyses and budget planning. While Petitioner’s invoices to an advertiser customer list a separate charge for the prewritten software/data offering, Petitioner’s product cannot be purchased without this data/prewritten software component. Given the multiple-component nature of the product Petitioner sells to advertisers, an initial question in determining the taxability of that product is whether the product should be taxed as a single unit or as multiple units. We think it should be taxed as a single unit because it is sold as a standardized, integrated product and its components cannot be bought separately from Petitioner. See *Matter of Penfold v State Tax Comm’n*, 114 AD 2d 696 (3d Dep’t 1985) (dumping fee held not to be separate from vendor’s waste-removal service because the dumping service was almost invariably provided in conjunction with the waste-removal service and was merely an expense of providing that service); cf. TSB-A-15(13)S (the multiple services the vendor performed for retailers were separate services even though billed under a single charge because they were not part of a single standardized offering and none was necessary to perform another of the services). In our view, the primary function of the product sold to advertisers is a coupon processing service, which, as discussed above, is not a taxable service. Therefore, none of the Petitioner’s charges to its customers described in this Advisory Opinion are taxable under the sales tax.

DATED: June 9, 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.