

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance ("Department") received a Petition for Advisory Opinion from [REDIRECTED] ("Petitioner"). Petitioner asks whether its receipts from providing an online directory, which lists persons who represent claimants seeking disability benefits, are subject to sales tax. We conclude that Petitioner's online directory is excluded from New York State sales tax, because it constitutes the furnishing of advertising services.

Facts

Petitioner anticipates establishing a website that maintains a directory of persons who assist and represent claimants seeking social security disability benefits. These representatives typically represent claimants before administrative hearings on disability determinations.

The directory is free to access for claimants. Claimants can access the directory by either creating a user account on the directory website or using their existing Facebook or Google account to log into the directory website. Once a claimant accesses the directory website, the claimant can search the directory for a representative. The directory will include contact information for representatives listed in the directory, allowing claimants to contact representatives if they so choose.

Representatives who wish to be listed in the directory pay a fee to the Petitioner. Petitioner anticipates charging representatives \$19.95 per month or \$99.95 per year, after providing a free three-month trial to interested representatives. Representatives who pay to be listed in the directory can upload their photo, logo, biography, email address, phone number and website address, all to be displayed in the directory.

The directory will be organized by state according to the location of the representative. Claimants can search the directory for a representative in their state and use the contact information from the directory to contact a representative directly. The website does not provide a means through which claimants can contact representatives. Instead, claimants would need to call or email a representative on their own (albeit using the contact information from the website).

Analysis

Tax Law imposes sales tax on sales, except for resale, of certain services. See Tax Law § 1105(c). Among the services subject to tax is "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." Tax Law § 1105(c)(1). Excluded from the tax on information services are advertising services. Tax Law § 1105(c)(1); TSB-M-10(7)S.

Advertising services consist of "consultation and development of advertising campaigns, and placement of advertisements with the media without the transfer of tangible personal property." 20 NYCRR 527.3(b)(5). Advertisements have been defined in New York as "the action of making generally known; a calling to the attention of the public." *Matter of United Parcel Serv. Inc. v Tax Appeals Trib. of State of N.Y.*, 98 AD3d 796, 798 (3d Dep't 2012) (internal quotations omitted).

Petitioner engages in the business of providing a website on which representatives who aid claimants for disability benefits can list their services and information for the public to see. Representatives are charged a fee for listing their information on the website. Potential claimants can use Petitioner's website for free in order to search for representatives they may wish to contact and/or retain. Charges for representative listings are not contingent upon the retention of a representative by a claimant. The website allows representatives to better call their existence and profile to the attention of claimants and the public in general. This type of listing and displaying of representatives' information constitutes the placing of advertising. See TSB-A-93(20)S (determining that fees paid for the right to participate in a computerized information directory was for advertising and not subject to sales tax). Accordingly, the charges by Petitioner to representatives for listing and displaying their information in Petitioner's directory on its website are not taxable.

DATED: August 14, 2024

/s/

MARY ELLEN LADOUCEUR
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.