

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] ("Petitioner"). Petitioner asks whether it must include sales tax on invoices for information technology services rendered to clients with shipping and postal addresses in New York State, but with out-of-state addresses on the invoices.

We conclude that sales tax must be collected on the receipts from taxable services delivered in New York State, irrespective of the address on the invoice.

Facts

Petitioner is a foreign company with no physical presence in the United States. Petitioner provides information technology services to customers with shipping and postal addresses in New York State, but with invoice addresses in Florida. Petitioner provided no information about the nature of its services and asks only whether the shipping/postal address or the invoice address controls whether New York State and local sales taxes must be collected.

Analysis

Petitioner states that it has no physical presence in New York State. Petitioner did not ask, nor can we opine in an Advisory Opinion, about whether it has nexus with New York.¹ Moreover, Petitioner did not ask whether its information technology services would be subject to sales tax, and it provided no information on which such an opinion could be based. Accordingly, this Advisory Opinion is limited to the question of whether the shipping/delivery address or the invoice address controls whether sales tax must be collected.

Sales tax is a destination tax, meaning that the point of delivery or point at which possession is transferred to the purchaser controls the tax incident and the tax rate. See 20 NYCRR 525.2(a)(3); *Matter of Hotel Depot, Inc. and Matter of Dipesh Parikh*, Tax Appeals Tribunal, January 24, 2020. Therefore, if Petitioner has nexus with New York State

¹ We note that a business may have nexus if it regularly or systematically solicits business in New York State, even if it has no physical presence in the State. See Tax Law § 1101(b)(8)(iv); TSB-M-19(4)S.

and delivers a taxable service in the State, it must collect sales tax at the combined State and local rate in effect in the jurisdiction where delivery of this service takes place, even if the address on the invoice for that service is outside of the State.

DATED: August 16, 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.