



Advisory Opinion: TSB-A-24(46)S

The Department of Taxation and Finance received a Petition for Advisory Opinion from { REDACTED } ("Petitioner"). Petitioner asks whether its charge for the use of its web-based job search and posting platform is a sale of tangible personal property, a sale of information services, or a sale of advertising services.

We conclude that Petitioner's charges for the use of its platform do not constitute the sale of tangible personal property or the sale of a taxable information service. Rather, Petitioner's charges to third-party job-search website providers, customers and users for job postings are charges for an advertising service, the receipts from which are not subject to sales tax.

Facts

Petitioner's business consists of providing customers fully-integrated job search and posting functionality on a single web-based platform ("platform"). The platform allows a customer to quickly and easily integrate job searching and job posting functionality within its own website. Customers may include local chambers of commerce or professional, technical or undergraduate schools. The platform is provided to a customer free of charge using a link provided by Petitioner, with which the customer can embed the platform on its website. Once the platform is embedded on a customer's website, the platform will aggregate job postings from third-party job-search websites and allow for the posting of jobs on the customer's website. A user of the customer's website can search for jobs by job title and/or geographic location. Users can click on a job posting and apply for the posted jobs.

If a user of the customer's website clicks on any job posting from a third-party website, Petitioner receives a pay-per-click fee ("PPC fee") from the third-party website. The platform also allows the users of the customer's website to post jobs and manage the job postings for a fee ("posting fee"). Petitioner receives a fee directly from the user for each such job posting and that fee is split between Petitioner and the customer. The embedded platform also facilitates Petitioner's PPC and posting fees, as described above.

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), (c). Tax Law § 1101(b)(5) defines sale as the transfer of title or possession or both for a consideration. Tax Law § 1101(b)(6) defines tangible personal property as "corporeal personal property of any nature." That term also includes pre-written computer software, whether sold as part of a package, as a separate component, or otherwise, and regardless of the medium by means of which such software is conveyed to a purchaser.

While Petitioner's platform is computer software that falls within the definition of tangible personal property, Petitioner's provision of access to the platform to its customers is not a sale, because Petitioner does not charge customers for such use. Because there is no consideration for the use of the platform, no sale occurs on which tax would be due.

Sales tax is imposed on the service of furnishing information to purchasers, regardless of whether the information is furnished in a printed report or electronically. Tax Law § 1105(c)(1), (9). An information service 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); 20 NYCRR 527.3(a)(2).

Advertising services are excluded from the tax on information services. See Tax Law §1105(c)(1). For purposes of this exclusion, "[a]dvertising services consist of consultation and development of advertising campaigns, and placement of advertisements with the media without the transfer of tangible personal property. Advertisements have been defined 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 Dept. 2012) (internal quotations omitted). Here, Petitioner's service makes available jobs known to job seekers using the customer's website. It also calls public attention to available jobs by allowing customers and users to promote their own job postings. By aggregating the postings of third-party job search websites, Petitioner's site increases the visibility of customers' and users' postings, as well as the third-party postings. Accordingly, the fees Petitioner receives from third-party job-search websites and from user job postings are charges for an advertising service, are not subject to sales tax. See 20 NYCRR 527.3(b)(5).

DATED: October 10, 2024

/s/

MARY ELLEN LADOUCEUR
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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.