

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 [REDACTED] (“Petitioner”). Petitioner asks whether the secure hosted exchange service to which it subscribes is subject to sales tax.

We conclude that the secure hosted exchange service to which Petitioner subscribes is not subject to sales tax.

Facts

Petitioner is a business located in New York State that subscribes to a secure hosted exchange service (the “service”) for its business e-mail from a provider located in Florida. The service, as described by Petitioner, is an option for businesses that need e-mail service, but do not want to pay for equipment or information technology staff. The service allows businesses to enjoy worry-free e-mail, mobile device synchronization and the other benefits of Microsoft Exchange. Microsoft Exchange is an e-mail server that allows Petitioner access to e-mail, calendars, contacts, and scheduling.

Petitioner purchases the secure hosted exchange service from the provider on a yearly basis and renews the contract every June. Petitioner started the contract with the provider in 2015. Under the contract, Petitioner purchases email service that includes: (1) unlimited mailbox storage; (2) premium email security protection; (3) anti-virus protection; and (4) live phone support. The service that Petitioner purchases also includes ActiveSync and a Messaging Application Programming Interface (“MAPI”). ActiveSync keeps all the exchange data synchronized between devices and MAPI allows multiple applications to interact with multiple messaging systems across a variety of hardware platforms.

Petitioner is solely responsible for its connection to the Internet and must maintain a valid Internet Protocol address to use the service. The service includes the licensing for Microsoft Outlook software for each of Petitioner’s employees. Upon terminating the service, Petitioner is responsible for uninstalling any Microsoft Outlook or other client software that is licensed as part of the service. Petitioner is also subject to the service provider’s license with Microsoft and possibly one or more suppliers. Petitioner is a party to the Microsoft End User License, which must be acknowledged by Petitioner during its Microsoft Outlook software installation on its computers and devices. The service provider also provides online support for configuration of Microsoft Outlook or other select e-mail programs, as well as connectivity to the service.

Analysis

Sales tax is imposed on sales, except for resale, of certain services. *See* Tax Law § 1105(a), (b), and (c). Among the taxable services are telephony and telegraphy. *See* Tax Law § 1105(b)(1)(B). E-mail service qualifies as telephony or telegraphy service for purposes of Tax Law § 1105(b)(1).

The Internet Tax Freedom Act (“ITFA”) prohibits states from imposing taxes on Internet access and multiple or discriminatory taxes on electronic commerce. *See* ITFA § 1101(a). The term “Internet access service” means a service that enables users to access content, information, electronic mail, or other services offered over the Internet.

Electronic mail services are included in the ITFA definition of Internet access, regardless of whether such services are provided independently or packaged with Internet access. *See* ITFA § 1105; TSB-M-08 (4)C, (2)S. Therefore, the provider’s charge for its e-mail service is not subject to New York sales tax.

Petitioner also asked whether its provider has the authority to collect sales tax from Petitioner for prior periods for which tax had not been collected, but did not specify the prior periods at issue. The Department is not in a position to opine on the terms of Petitioner’s contract with its provider. However, we note that the inclusion of separately-sold email services in the definition of Internet Access for purposes of the Internet Tax Freedom Act took effect on November 1, 2007, and those services have been exempt from New York State and local sales taxes since that date.

DATED: June 26, 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.