

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-91 (39)S
Sales Tax
May 9, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910325A

On March 25, 1991, a Petition for Advisory Opinion was received from Robert W. Burns, 48 Harper Drive, Pittsford, New York 14534.

The issue raised by Petitioner, Robert W. Burns, is whether his professional activities in conducting accident reconstruction investigations constitute a service subject to the imposition of State and local sales and use taxes.

Petitioner operates an accident reconstruction business for attorneys and insurance companies. Petitioner goes to scenes of accidents after the police have investigated. He takes photographs and measurements and interview drivers and witnesses. Petitioner then provides his clients with a confidential written or oral report of the findings of his investigation.

At the request of the New York State Department of State, Petitioner was required to obtain a Private Investigators License.

Section 1105(c)(8) of the Tax Law as, enacted by Chapter 190 of the Laws of 1990, imposes sales tax upon:

Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

Generally detective services include activities by an individual who among other things makes investigations to obtain information regarding the causes of accidents, damage or injury or is engaged in securing evidence to be used in trials or hearings. (13 New York Jurisprudence 2d, Businesses and Occupations § 284, at 103.)

Section 1105(c)(8) of the Tax Law is substantially similar to Section 1212-A(b)(2)(i)(B) of the Tax Law allowing New York City to impose sales tax on protective and detective services.

New York State Department of Taxation and Finance, Sales Tax Information on Selected Services in New York City, Publication 846 (1/89) in listing protective and detective services subject to the New York City sales tax states at page 8:

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"Q. Are the services of trial preparation investigating, for the purpose of evaluating the merits of a claim with respect to fixing a settlement values, subject to the 4% sales tax imposed by New York City?

A. Yes, when the reports are delivered to a client in New York City."

Accordingly, Petitioner's activities in conducting investigations and obtaining information regarding automobile accidents for use by attorneys and insurance companies comes within the definition of protective and detective services as intended by Section 1105(c)(8) of the Tax Law and therefore such activities are subject to State and local sales and use tax. Stanley Greenfield, Adv Op, Comm T & F, July 24, 1990, TSB-A-90(35)S.

DATED: May 9, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.