

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

TSB-A-95 (24)S
Sales Tax
June 29, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940811D

On August 11, 1994 a Petition for Advisory Opinion was received from Stephen J. Boyko, Inc., 811 Old Country Road, Plainview, New York 11803.

The issue raised by Petitioner, Stephen J. Boyko, Inc. is whether Petitioner must collect sales tax on receipts from fees charged to clients for Petitioner's activities as an independent adjuster.

Petitioner's business activities consist of services which are performed by private investigators and services which are performed by independent adjusters. Petitioner is licensed as a private investigator under Article 7 of the General Business Law and as an independent adjuster under Article 21 of the Insurance Law.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.---...there is hereby imposed and there shall be paid a tax ... upon:

(c) The receipts from every retail sale, except for resale, of the following services:

(8) 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 performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible property is transferred in conjunction therewith.

Article 7 of the General Business Law states, in part:

§70. Licenses

1. The department of state shall have the power to issue separate licenses to private investigators and to watch, guard or patrol agencies....

3. ...Nothing contained in this section shall be deemed to include the business of adjusters for insurance companies, nor public adjusters licensed by the superintendent of insurance under the insurance law of this state....

§71. Definitions

1. "Private investigator" shall mean and include the business of private investigator and shall also mean and include, separately or collectively, the making for hire, reward or for any consideration whatsoever, of any investigation, or investigations for the purpose of obtaining information with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed for fee, hire or reward; crime or wrongs done or threatened against the government of the United States of America or any state or territory of the United States of America; the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other groups of persons, firm or corporation; the credibility of witnesses or other persons; the whereabouts of missing persons; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for fires, or libels, or losses, or accidents, or damage or injuries to real or personal property; or the affiliation, connection or relation of any person, firm or corporation with any union, organization, society or association, or with any official, member or representative thereof; or with reference to any person or persons seeking employment in the place of any person or persons who have quit work by reason of any strike; or with reference to the conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors, and sub-contractors; or the securing of evidence to be used before any authorized investigating committee, board of award, board of arbitration, or in the trial of civil or criminal cases. The foregoing shall not be deemed to include ... persons engaged in the business of adjusters for insurance companies nor public adjusters licensed by the superintendent of insurance under the insurance law of this state.

Article 21 of the Insurance Law states, in part:

§2101. Definitions

(g) In this article, "adjuster" means any "independent adjuster" or "public adjuster" as defined below:

(1) The term "independent adjuster" means any person, firm, association or corporation who, or which, for money, commission or any other thing of value, acts in this state on behalf of an insurer in the work of investigating and adjusting claims arising under insurance contracts issued by such insurer and who performs such duties required by such insurer as are incidental to such claims and also includes any person who for compensation or anything of value investigates and adjusts claims on behalf of any independent adjuster....

In Compass Adjusters and Investigators Inc. v. Commissioner of Taxation and Finance of the State of New York, 610 NYS2d 625, 197 AD2d 38, the court stated that:

...among the detective and protective services covered by Tax Law § 1105(c)(8) are those provided by detective agencies, but the Tax Law contains no definition of detective services or detective agency. ... That broad definition can be found in General Business Law article 70, which regulates private investigators and certain other agencies (see, General Business Law § 71 [1]). Expressly excluded from the broad definition of private investigator, however, are persons engaged in the business of adjusters for insurance companies and public adjusters licensed under the Insurance Law (id). Among those regulated by Insurance Law article 21 are adjusters. An adjuster is defined as any independent adjuster or public adjuster and an independent adjuster is defined as one who acts "on behalf of an insurer in the work of investigating and adjusting claims arising under insurance contracts issued by such insurer and who performs such duties required by such insurer as are incidental to such claims" (Insurance Law § 2101[g][1]).

Based upon the foregoing statutory scheme, and considering the general rule that tax statutes are to be strictly construed with any doubt resolved in favor of the taxpayer ... we conclude that the term protective and detective services contained in Tax Law § 1105(c)(8) does not include those services which cannot be performed without the license required by Insurance Law §2101(a)(1). ... Plaintiffs are licensed private investigators and licensed independent adjusters. Their status at any given time depends entirely upon the nature of the activities they are performing at that time. When they are performing activities that require a license pursuant to the provisions of General Business Law article 70, plaintiffs are acting as private investigators for which no independent adjuster license is required, and they concede that the fees they charge for those detective services are subject to the sales tax under Tax Law § 1105(c)(8). When plaintiffs are performing activities that require a license pursuant to the provisions of Insurance Law article 21, they are acting as independent adjusters, for which no private investigator's license is required, and the fees charged for those services are not subject to the sales tax.

In the instant matter, Petitioner is licensed as a private investigator under Article 7 of the New York State General Business Law and as an independent adjuster under Article 21 of the New York State Insurance Law. Based on the court's decision in Compass Adjusters and Investigators Inc. v. Comn of Taxation and Finance of the State of New York, 610 NYS2d 625, 197 AD2d 38, whenever Petitioner performs activities requiring a license under the provisions of Insurance Law article 21, Petitioner will be considered to be performing services as an independent adjuster and the receipts from fees charged to clients for such activities will not be subject to the tax imposed under Section 1105(c)(8) of the Tax Law. Such activities consist of the work of investigating and adjusting claims on behalf of an insurance company arising from insurance contracts issued by such insurance company and performing such duties required by the insurer as are incidental to such claims. However, when Petitioner performs activities requiring a license under the provisions of General

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Business Law article 7, Petitioner will be considered to be performing services as a private investigator and the receipts from those activities will be subject to the tax imposed under Section 1105(c)(8) of the Tax Law.

DATED: June 29, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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