

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

TSB-A-95 (25)S
Sales Tax
June 29, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940810A

On August 10, 1994 a Petition for Advisory Opinion was received from Robert M. Bridges, c/o Jacobson & Schwartz, 510 Merrick Road, P. O. Box 46, Rockville Centre, New York 11571.

The issue raised by Petitioner, Robert M. Bridges, is whether the receipts from the activities described below of a New York, corporation which is licensed as an independent adjuster as defined in Section 2101(g) of the New York State Insurance Law, are subject to New York State and local sales tax.

Petitioner's client, a New York corporation, is licensed under Article 21 of the New York State Insurance Law as an independent insurance adjuster. The client only performs insurance adjusting functions. The client is not licensed as a private investigator and does not perform private investigation services.

As part of Petitioner's client's adjustment business, the client engages in trial preparation for personal injury and property damage cases assigned to it by insurance companies, self-insurers or their attorneys. The client's services include interviewing and obtaining signed or recorded statements from claimants, insureds and witnesses; observing, photographing and/or videotaping insurance claimant's activities; obtaining photographs and preparing diagrams of accident scenes; obtaining copies of official reports and records; serving subpoenas; and evaluating claims and negotiating settlements.

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 personal 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 incensed 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 seeing 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.
2. "Watch, guard or patrol agency" shall mean and include the business of watch guard or patrol agency and shall also mean and include, separately or collectively, the furnishing, for hire or reward, of watchmen or guards or private patrolmen or other persons to protect persons or property or to prevent the theft or the unlawful taking of goods, wares and merchandise, or to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes or

other valuable documents, papers, and articles of value, or to procure the return thereof or the performing of the service of such guard or other person for any of said purposes. The foregoing shall not be deemed to include the business of ... 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 New York State 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 in part 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 § 2102(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.

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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's client is licensed as an independent adjuster as defined under Section 2101(g) of the Insurance Law. Petitioner's client is not licensed as a private investigator. The activities performed by Petitioner's client, as described above, are the type of activities contemplated to be performed by a licensed independent insurance adjuster pursuant to said section of the Insurance Law.

Therefore, it must be concluded that Petitioner's client is hired to perform services as an independent insurance adjuster and not as a private investigator. Accordingly, when the client is performing the services of investigating and adjusting an insurance claim as an independent adjuster and such activities include the performance of the services discussed above, the client's charges to the customer will be for services performed by an independent adjuster as contemplated by Section 2101(g) of the Insurance Law and will not be subject to the tax imposed under Section 1105(c)(8) of the Tax Law. The client's services, even though including services of an investigatory nature, are not to be construed as the services of a private investigator. Compass Adjusters and Investigators, Inc. v Commissioner of Taxation and Finance, supra.

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.