

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-03(42)S
Sales Tax
November 24, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S030520D

On May 20, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from Deloitte & Touche LLP, 191 Peachtree Street, Suite 1500, Atlanta, Georgia, 30303.

The issue raised by Petitioner, Deloitte & Touche LLP, on behalf of its client (“Client”) is whether charges for services consisting of premium audits and surveys provided to insurance carriers located or doing business in New York are subject to sales tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Client’s activities consist of conducting premium audits and surveys for insurance carriers providing information used to adjust premiums and manage risk. Client’s services can be grouped into four broad categories:

- (1) Premium Audit Services – Client reviews the payroll of an insured and verifies or adjusts previously reported premium information to the insurer. Written reports are provided to the insurer.
- (2) Commercial Underwriting Surveys – Client’s personnel perform inspections of insured property. As part of such inspections they may review historical documents, diagrams, photographs, etc. Any additional documentation gathered by Client’s personnel (i.e., current photographs of the property) remains with Client and only the results of the investigation are provided to the insurer through written reports. The surveys are not appraisals.
- (3) Residential Underwriting Surveys – Client performs standard and custom residential surveys to help assess the value of properties and manage the insurance-to-value of entire books of business.
- (4) Governmental Site Surveys – Client performs condition reviews, often required of public assistance and loan programs involving government-backed loans, on commercial and residential properties.

The insurers use the information to compare the premium charged with the risk of coverage. The information provides guidance with regard to whether the premium should be increased or decreased to match the risk of coverage.

The audits and surveys performed by Client are conducted through various methods: by company employees, by independent contractors, and/or by telephone interviews from an out-of-

state call center. The information collected is private in nature with the final report or survey being provided only to the insurance carrier for its own use. The report completed by Client for the insurance carrier analyzes data provided both by the insurer and insured.

Applicable law and regulations

Section 1105(a) of the Tax Law imposes a tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 1105(c) of the Tax Law provides, in part:

The receipts from every sale, except for resale, of the following services:

(1) 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, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons. . . .* (Emphasis added)

* * *

(5) *Maintaining, servicing or repairing real property, property or land*, as such terms are defined in the real property tax law, whether the services are *performed in or outside of a building*, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this article. . . . (Emphasis added)

* * *

(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 . . . whether or not tangible personal property is transferred in conjunction therewith. (Emphasis added)

Section 527.3 of the Sales and Use Tax Regulations provides, in part:

(a) Imposition. (1) Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from the service of furnishing information by printed, mimeographed or multigraphed matter

or by duplicating written or printed matter in any manner such as by tapes, discs, electronic readouts or displays.

(2) The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service. (Emphasis added)

* * *

(b) Exclusions. (1) Sales tax does not apply to receipts from sales of information services which are for resale as such.

(2) The sales tax does not apply to the receipts from the sale of information which is personal or individual in nature and which is not or may not be substantially incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed such information. (Emphasis added)

Section 527.5(a) of the Sales and Use Tax Regulations provides, in part:

Imposition. (1) The tax is imposed on receipts from every sale of the services of installing, maintaining, servicing or repairing tangible personal property. . . .

* * *

(3) Maintaining, servicing and repairing are terms used to cover all activities that relate to *keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition. (Emphasis added)*

* * *

Example 6: A company operates a diagnostic service in which it tests an appliance for a set fee, but does not repair the appliance. *The charge for the diagnostic service is taxable. (Emphasis added)*

Section 527.7 of the Sales and Use Tax Regulations provides, in part:

(a) Definitions. (1) Maintaining, servicing and repairing are terms which are used to cover all activities that relate to keeping real property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition. . . .

(2) Real property, property and land are defined as in subdivision 12 of section 102 of the Real Property Tax Law. . . .

* * *

(b) Imposition. (1) The tax is imposed on receipts from every sale of the services of maintaining, servicing or repairing real property, whether inside or outside of a building.

Opinion

Client's business activities consist of conducting premium audits and surveys for insurance carriers. The insurers use the information to compare the premium charged with the risk of coverage and further use the results to adjust premiums and manage risk.

The audits and surveys performed by Client are conducted through various methods: by company employees, by independent contractors, and/or via telephone interviews from an out-of-state call center. The information collected appears to be private in nature with the final report or survey being provided to the insurance carrier for its own use.

All sales of tangible personal property and certain sales of enumerated services are subject to sales tax. See sections 1105(a) and 1105(c) of the Tax Law. Charges for performing nontaxable services will not be subject to sales tax provided that the services are not sold in conjunction with the performance of any other taxable services, and are not performed for a customer in conjunction with the sale of tangible personal property. See *Virtual Systems Group, LLC.*, Adv Op Comm T&F, October 9, 1998, TSB-A-98(71)S; *Arteffects, Inc.*, Adv Op Comm T&F, February 21, 1996, TSB-A-96 (10)S; *Alan/Anthony, Inc.* Adv Op Comm T&F, January 31, 1992, TSB-A-92(6)S.

Client's "premium audit" services appear similar to payroll, accounting and bookkeeping services. Services which merely audit payroll and premium information of insured parties for the insurer are not among the enumerated services subject to sales tax under section 1105(c) of the Tax Law. See *Maintenance Service Resources, Inc.*, Adv Op Comm T&F, March 24, 1998, TSB-A-98(22)S.

Client's surveys of government sites and surveys for residential and commercial underwriting include inspections as well as the collection and analysis of pertinent information. Real property inspection services performed by Client solely for purposes of governmental code compliance, and real property inspection services performed by Client for insurers which are not related to or performed in conjunction with repairing, maintaining or servicing tangible personal or real property are likewise not among the enumerated taxable services. See *Commonwealth Electrical Inspection Service, Inc.*, Adv Op Comm T&F, December 2, 1998, TSB-A-98(82)S. The fact that such surveys may result in the issuance of a report does not automatically transform such services into information services subject to sales tax. See *Rochester Gas and Electric Corporation*, Dec Tax App Trib, January 4, 1991, TSB-D-91(1)S.

TSB-A-03(42)S
Sales Tax
November 24, 2003

To the extent Client's services furnish information which is personal and individual in nature and is not substantially incorporated by Client in reports furnished to other persons, charges for such services would qualify for the exclusion provided by section 1105(c)(1) of the Tax Law. See *Anne E. Steger*, Adv Op Comm T&F, April 6, 1994, TSB-A-94(16)S. However, if the information comes from a common source or a data repository that is not confidential, then the information provided is not personal and individual in nature despite the fact that the results may be customized for each client. See *ADP Automotive Claims Servs. v. Tax Appeals Tribunal*, 188 AD2d 245, *lv denied* 82 NY2d 655; *ADP Collision Estimating Services, Inc.*, Dec Tax App Trib, August 8, 1991, TSB-D-91(67)S.

According to the facts provided, it appears that Client's charges to insurance carriers for its various surveys would qualify for exclusion from tax as either inspections performed for purposes of governmental code compliance, information services which are personal or individual in nature (provided the information is not furnished to others by Client), or real property inspections of a kind not related to the maintenance or servicing of real or tangible personal property (e.g., engineering surveys, OSHA compliance, utility usage evaluations, valuation appraisals, etc.). Client's premium audit services appear to be payroll or bookkeeping services which are not enumerated as taxable under section 1105(c) of the Tax Law.

If Client's services were related to the servicing and repair of real or tangible personal property, or if Client's personnel investigated the causes or origins of, or responsibility for, fires, losses, accidents, or damage or injuries to real or personal property, Client's charges would be taxable under section 1105(c) of the Tax Law. See *Commonwealth Electrical Inspection Service, Inc.*, *supra*; *Marvin Rosenthal*, Adv Op Comm T&F, January 24, 1997, TSB-A-97(2)S. Similarly, if Client's services were performed in conjunction with the sale of taxable tangible personal property or other taxable services, the entire receipt from the sale would be subject to tax unless the charges for the nontaxable service and tangible personal property or taxable service were separately stated and reasonable, and such services and property could be separately purchased. See *Salomon & Leitgeb CPA's, LLP*, Adv Op Comm T&F, July 23, 1997, TSB-A-97(44)S; *Alan/Anthony, Inc.*, Adv Op Comm T&F, June 19, 1992, TSB-A-92(51)S.

DATED: November 24, 2003

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

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