

**New York State Department of Taxation and Finance**  
**Office of Counsel**  
**Advisory Opinion Unit**

TSB-A-10(32)S  
Sales Tax  
July 23, 2010

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100316C

On March 16, 2010, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its receipts from the sale of financial data, software, reports, and technical support, research support, and training services are subject to sales tax.

We conclude that Petitioner's sale of data is subject to sales tax under Tax Law section 1105(c) as the furnishing of an information service. Reports that are sold online are subject to sales tax under Tax Law section 1105(c) as the furnishing of an information service. The sale of application software is subject to sales tax as the sale of tangible personal property. Separately billed charges for technical support, research support, and training are not subject to sales tax.

**Facts**

Petitioner, a California based company, has an office in New York City. It is an aggregator and purveyor of financial data feeds. The data feeds are comprised of historical data and are updated on a daily, weekly, or monthly basis, depending upon the type of data and the requirements of a particular customer. The data feeds are updated by Petitioner's analysts, who gather information from SEC filings, press releases, web sites, interviews, and earnings transcripts, as well from their own primary research. The data is maintained in a single master database stored on Petitioner's servers, which are located outside New York State.

Petitioner has multiple data feeds that it will license, and it will also create customized data feeds to fit a customer's requirements. Petitioner's data feeds include the following:

1. "Hierarchy Data Feed" classifies companies into specific categories based on the products and services they sell;
2. "RISC Data Feed" is an industry classification system that maps companies into specific industry groups;
3. "Relationship Data Feed" provides data on companies' relationships by mapping their customer, supplier, partner, product, and geographic relationships;
4. "Trademark Data Feed" provides data on companies' products by mapping their products, services, and trade names owned and marketed by them;
5. "Healthcare Data Feed" provides data on clinical and regulatory events, such as patent expirations and FDA applications and decisions.

Petitioner's customers are hedge funds, money managers, and other financial institutions, which use Petitioner's data feeds to evaluate and manage the risk of investments.

Customers access the data feeds online using a username and password provided by Petitioner. Data feeds are updated at regular intervals. Customers download data feeds to their servers at regular intervals as the data feeds are updated. Customers query the data feeds through software. Petitioner provides customers with prewritten software that they use to download data from Petitioner's servers. In the alternative, customers can make data queries using their software such as Oracle Database or Excel Spreadsheets, which are configured based on documents provided by Petitioner. Queried results are formatted in tabular reports, which are stored on the customer's server.

Customers pay a recurring client license fee for each data feed per user. The query tool is included in the price for the data feed, i.e., Petitioner's customers pay the same fee regardless of whether they use the query tool provided by Petitioner.

A customer may require unique data feeds that are customized to meet its requirements. Petitioner bills separate charges to its customer for the cost of creating a customized data feed.

As an alternative to the use of the query tool, Petitioner offers for sale as a distinct product a prewritten software application that enables customers to find, filter, and organize company information from the data feeds; capabilities that the query tool does not have. The application can be used with the full range of Petitioner's data feeds and also can be used with products other than those sold by Petitioner. Petitioner bills a separate charge for the application software if it is purchased in conjunction with access to data feeds. This product is stored on Petitioner's servers located outside New York State and can be accessed by a customer from any computer by entering a unique username and password. A customer licensing the application software pays a single recurring fee for each user.

Petitioner also sells the following reports:

- M & A Scenario Reports - these reports provide information on any merger and acquisition scenarios between public companies, including information such as overlapping and complementary product lines, business divisions, customers, suppliers, and partners;
- FDA Approval Decision Reports - these reports contain comprehensive calendars of FDA decisions for New Drug Application and Biologic License Application filings;
- Drug/Medical Device Reports - these reports contain a detailed presentation of a company's drugs/devices-- both existing and in development--including their indications, clinical trial status, and primary mechanism of action;
- MedTech PMA Pipeline Monitor Reports - these reports provide actionable information by identifying MedTech companies with expected premarketing approvals over the course of the next two years and includes details on each device candidate.
- Company Profile Reports - for every U.S. and Canadian-listed company, Petitioner sells a Company Profile Report that offers a 360-degree view of how the company generates value, the products/services it sells broken down by sector and subsectors, and its key relationships.
- Competitor by Product Reports- these reports use data from the [REDACTED] Hierarchy data feed to map a company's products and services, providing product-by-product comparables against the company's competitors. This enables detailed sector-by-sector comparison among the company and its direct competitors, based on the products and services it sells.

The core of these reports is data presented in standardized formats. The reports do not contain narrative articles. The reports are available for purchase from Petitioner's e-commerce store. Certain reports are published on a monthly basis and other reports are published when requested by a customer.

Petitioner offers customers two levels of technical support: standard level and premium level. The standard level is provided without additional charge. Premium level is an optional service. Standard level service provides customers with access to all bug fixes and customer support lines for basic application questions and access to Petitioner's user's guide. The standard level service also provides customers with product enhancements and new versions. The premium level of support provides customers with support beyond the standard configuration and application questions, including debugging, custom integration, diagnosing hardware/software problems, firewall support, and operating system trouble shooting. Technical support for premium service is separately itemized and invoiced.

Petitioner offers customers two levels of research support: standard level and premium level. The standard level is provided without additional charge. The standard level provides customers access to Petitioner's research analysis to ask general questions related to Petitioner's data feeds and applications. The premium level of support provides customers with support beyond the standard general research questions, including the assignment of a dedicated researcher and the ability to have Petitioner's analysts run specific customer queries. Premium level research support is separately itemized and invoiced.

Petitioner offers as an optional service training on the proper use of Petitioner's data feeds and applications. Training is separately itemized and invoiced.

### **Analysis**

Tax Law section 1105(c)(1) imposes sales tax on the receipts for the service of furnishing of information by printed matter, 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 that is personal or individual in nature and that is not or may not be substantially incorporated in reports furnished to other persons. Tax Law section 1105(c)(9) imposes sales tax on the receipts for the service of furnishing or provision of an information service that is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature. Section 1105(c)(9) contains a qualification that in no event shall the furnishing or provision of an information service be taxed under section 1105(c)(9) unless it would otherwise be subject to taxation under section 1105(c)(1) if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner.

Section 1105(a) imposes sales tax on the sale of tangible personal property. Tangible personal property is defined in Tax Law section 1101(b)(6) as including prewritten computer software. Prewritten computer software is any computer software that is not designed and developed by the author or other creator to the specifications of a specific purchaser. Tax Law § 1101(b)(14). The sale of prewritten software includes any transfer of title or possession or license to use for consideration. *See* Tax Law § 1101(b)(5). The medium by which the software is transferred to the purchaser has no effect on its taxability. Tax Law § 1101(b)(6); TSB-M-93(3)S. Software delivered electronically (i.e., downloaded) is still taxable as the sale of tangible personal property. *Id.* In sum, a customer's payment made for a license to use prewritten software is subject to sales tax as a receipt for the sale of tangible personal property.

Petitioner's data feed products (Hierarchy, RISC, Relationship, Trademark, Healthcare) are information services subject to sales tax under Tax Law section 1105(c). The collecting, compiling or

analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service.” 20 NYCRR 527.3(a)(2). The data feeds are compilations of data, which are accessible to all purchasers of the service.

The exclusion pertaining to information that is personal or individual in nature and that is not or may not be substantially incorporated in reports furnished to other persons is inapplicable to the data feed services. The first criterion (information that is personal or individual in nature) is satisfied only by information that is uniquely personal or individual in nature. *Matter of Allstate Ins. Co. v. Tax Commn. of the State of New York*, 115 AD2d 831, *affd* 67 NY2d 999; *Twin Coast Newspapers, Inc. v. State Tax Commission*, 101 AD2d 977. It is the source of the information which controls whether the report prepared will meet the criteria of "personal and individual." *Matter of ADP Automotive Claims Service Inc.*, Tax Appeals Tribunal, August 8, 1991. Information is not uniquely personal or individual in nature if it comes from a common source or a data repository that itself is not confidential. *See Matter of ADP Automotive Claims Service Inc. v Tax Appeals Tribunal*, 188 AD2d 245 (3<sup>rd</sup> Dep't 1993); *Rich Products Corporation v Chu*, 132 AD2d 175 (3d Dep't 1987); *Towne-Oller & Assoc. v State Tax Comm*, 120 AD2d 873 (3d Dep't 1986); *Alan/Anthony, Inc.*, Adv Op Comm T&F, June 19, 1992, TSB-A-92(51)S. The information in the data feeds comes at least in part from public sources; therefore, the information in the databases is not personal or individual in nature.

The data feeds do not satisfy the second criterion of the exclusion. All subscribers can access the same database. Since all customers access the same data source, the information obtained by them by definition can be substantially incorporated in reports furnished to others. *See Matter of Rich Products., supra; Twin Coast Newspapers, supra.*

Even when the information provided to a data feed customer is customized in some manner, the information service would still be taxable if customized information is substantially derived from a common data source that is not confidential, e.g., a common data source maintained by the information service provider. *See Matter of Rich Products., supra; Matter of Towne-Oller and Associates, supra; Economic Cycle Research Institute, Inc.*, Adv Op Comm T & F, July 23, 1997, TSB-A-97(42)S. Petitioner's customized data feeds that are substantially derived from the data feeds described above or from public sources would be subject to sales tax as taxable information services.

The receipts from the sale of the M & A Scenario Reports, FDA Approval Decision Reports, Drug/Medical Device Reports, MedTech PMA Pipeline Monitor Reports, Company Profile Reports, and Competitor by Product Reports are subject to sales tax as sales of information services. The publications do not qualify for the periodical exemption because of their content. Publications that provide only information and data in rigid standardized formats do not qualify as periodicals. *See Standard Rate & Data Service, Inc. v State Tax Commission*, 72 A.D.2d 659 (3d Dep't 1979); *see also* 20 NYCRR 528.6(c). Irrespective of the content of the publications, the publications would not qualify as exempt periodicals. The Tax Law definition of tangible personal property in section 1101(b)(6) extends the exemption from sales and compensating use taxes afforded printed newspapers and periodicals by Tax Law section 1115(a)(5) to the electronic distribution of newspapers and periodicals only if they are exact counterparts (other than advertisements) of paper editions. Petitioner does not produce tangible paper editions of its publications for sale; therefore, the online publications do not come within the sales tax definition of tangible personal property and are not exempt. *See CCH Incorporated*, Adv Op Comm T & F, April 1, 2003, TSB-A-03(13)S; *The Bureau of National Affairs, Inc.*, Adv Op Comm T & F, August 6, 1998, TSB-A-98(55)S; *Mark S. Klein*, Adv Op Comm T & F, July 29, 1991, TSB-A-91(53)S.

Petitioner's license of its application software that enables customers to find, filter, and organize company information from the data feeds constitutes the sale of tangible personal property because the licensed software constitutes prewritten computer software as defined in Tax Law section 1101(b)(14), and receipts for the software license would be subject to sales tax under Tax Law section 1105(a). This application software remains a distinct product when sold in conjunction with access to data feeds because a customer can purchase the software or access to the data feed without purchasing the other product and Petitioner bills a separate charge for the software.

Petitioner is not selling the query software because this software is an integral component of its data feed product and is provided without charge to purchasers of that product. Petitioner is the user of this software. Tax Law section 1110 provides that software used by its author is not subject to use tax if the author does not offer similar software for sale as such, or as a component part of other property in the regular course of business. Petitioner, therefore, will not owe use tax on the software, provided that Petitioner does not sell the software as such or as a component part of other property in the regular course of business.

Petitioner's receipts for premium level technical and research support, and for training are charges for discrete services that are not subject to sales tax. These services are optional and separately stated on a customer's invoice. Section 1105(c) of the Tax Law imposes sales tax on certain enumerated services. The premium level technical and research support, and training services described by Petitioner are not among the enumerated services subject to sales or use tax; therefore, Petitioner's charges for technical support, research support, and training services are not subject to sales tax, provided that customers purchasing taxable information services are not required to purchase the technical support, research support and training services, and that the receipts for these services are reasonable in relation to the entire charge. *See KPMG LLP*, Adv Op Comm T&F, February 2, 2000, TSB-A-00(7)S; *Virtual Systems Group*, Adv Op Comm T&F, October 9, 1998, TSB-A-98(71)S; *Economic Cycle Research Institute, Inc.*, *supra*. However, if the charges for technical support include upgrades or new versions of the application software, those charges would be subject to sales tax as receipts from the sale of prewritten software, unless the charges for the software upgrades or new versions are separately stated and reasonable in relation to the entire charge.

DATED: July 23, 2010

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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.