

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

TSB-A-13(24)S
Sales Tax
September 9, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S111109A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether certain data processing and data warehousing services are subject to State and local sales and use tax. We conclude that the services provided by Petitioner are not subject to sales and use tax.

Facts

Petitioner recently purchased another business that provides data processing and data warehousing services to aid in compliance with the requirements of the Federal government's Centers for Medicare & Medicaid Services' ("CMS") program called Physical Quality Reporting Initiative ("PQRI"). As part of PQRI, an incentive payment is made to medical professionals (the "Customers" of the Petitioner) that successfully report required data.

Petitioner has a computer platform which simplifies and automates the process for its Customers to meet the PQRI requirements. The platform is comprised of hardware and software located outside New York State. The platform collects data from Customers and stores the data until the appropriate CMS submission date. Petitioner then submits eligible data to CMS via a computer file for its Customer to qualify for the incentive payment.

The Customer can submit data to Petitioner by one of two methods, either PQRI Enterprise or PQRI Self Service. Petitioner represents that the information provided for the PQRI filing is confidential in nature to its Customer and is not shared with or sold to another Customer.

Under the PQRI Enterprise method, the Customer provides Petitioner with either a file extract of the Customer's clinical data or Petitioner can query the Customer's system and pull out any data needed. In both cases, Petitioner's personnel validate and format the data to be loaded onto Petitioner's platform. Petitioner runs the data through its proprietary software program to determine what data meets the CMS eligibility criteria. Petitioner then provides Customer with a data file listing which of the Customer's providers are eligible for the CMS incentive payment ("Eligible Data File"). Petitioner charges its Customer a non-refundable fee ("Data Analysis Fee"). If the Customer approves the submission of the Eligible Data File, the Customer is then charged a fee ("Submission Fee") based on the number of providers in the Eligible Data File.

The Eligible Data File is then stored on Petitioner's platform until the CMS Submission date at which time Petitioner sends the computer file to CMS. CMS then reviews the data and processes incentive payments for the Customer's eligible providers. Petitioner does not receive any information or payment from CMS as the incentive payments are paid directly from CMS to the Customer.

The second method of submission of data by the Customer to the Petitioner is via the Petitioner's self-service website. This method requires the Customer to manually enter any needed data for submission to CMS. The server used by the website is located outside the State of New York and consists of hardware and software developed by Petitioner. The Customer selects a measure group approved by CMS to report (e.g., Back Pain, Coronary Artery Disease, Preventive Care). The Customer enters answers to four to ten questions as determined by CMS from its records for 30 patients per selected measure group.

The Customer's entries into the website are maintained in a "holding area" by the Petitioner until Petitioner reviews the data inputted. Petitioner reviews the data via its data processing service using proprietary evaluation software to determine what data is eligible for submission to CMS. If there is data which needs more information, Petitioner returns the data to the holding area and emails the Customer to correct the data. Corrections are done by the Customer and returned to the holding area for Petitioner's review. This back and forth process continues until the data is satisfactory for submission. Once Petitioner determines that the data is ready for submission, Petitioner moves the data to a platform for storage until the CMS Submission date. The Customer does not have access to the platform or any data stored on the platform.

The Customer is charged a one-time fee to utilize this service at the time of initial submission ("Self Service Fee"). At the CMS Submission date, Petitioner sends a data file to CMS. CMS reviews and provides the incentive payment to the Customer. Neither the Customer nor CMS have access or rights to use the platform as access to the platform is restricted to Petitioner.

Under the agreement between Petitioner and the Customer, the Customer does not have a license for the software. The Customer enters into a Services and Fees Schedule ("SAFS") as well as a Statement of Work detailing the services to be performed. Based on the Terms and Conditions referenced in the SAFS, the Customer acknowledges that Petitioner retains title, exclusive ownership rights and all intellectual property and other rights and interests in the platform and associated software. The Customer could not directly or indirectly sell, license or otherwise provide any part of the platform, nor could they decompile, disassemble or reverse engineer any component of the platform.

Analysis

Tax Law § 1105(c)(1) imposes tax on the receipts from the sale, except for resale, of the service of:

[F]urnishing 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 or may not be substantially incorporated in reports furnished to other persons...

Under the first method, the PQRI Enterprise, Petitioner's customers are being charged a Data Analysis fee and a Submission fee. We conclude that Petitioner's PQRI Enterprise service is

an information service because it includes analyzing and compiling customer information. Petitioner’s service does more than merely recast or reformat the Customer’s information. For example, Petitioner validates the information, converts it into a data file suitable for submission to CMS and returns data which needs additional work. This analysis adds to “intelligence” contained in the original documents, and therefore constitutes an information service. *See ADP Automotive Claims Services, Inc. v. Tax Appeals Tribunal*, 188 AD2d 245 (3d Dep’t 1993). However, we further conclude that Petitioner’s service is excluded from the tax on information services because it is personal or individual in nature. Petitioner organizes and analyzes the Customer’s own information and does not provide the original documents, or the analysis, compilation, or organization, to any party other than CMS. In this context, the submission to CMS does not change this result, because neither Petitioner nor the Customer is providing the information furnished by Petitioner (i.e., the added intelligence or validation provided by Petitioner) to others or incorporating the same into reports furnished to others. Based on the foregoing, Petitioner’s Data Analysis and Submission fees under the Enterprise method are not subject to New York State and local sales tax.

Under the second method, the PQRI Self Service, Petitioner’s Customer is being charged a Self Service fee. The only difference between the PQRI Self Service and the PQRI Enterprise services is how the information is provided to the Petitioner. Once the information is provided to the Petitioner, the same analysis is done by Petitioner to the information with the same “intelligence” added. In both cases, Petitioner provides the same service. We find the distinction of how the information is initially transmitted to Petitioner insufficient to warrant a different conclusion. In neither method does the customer directly access Petitioner’s platform or software. Accordingly, we conclude that Petitioner’s Self Service fee is a charge for a personal or individual information service that is not subject to New York State and local sales tax.

DATED: September 9, 2013

/S/

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.