

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-17(12)S
Sales Tax
July 31, 2017

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140324B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks about the sales taxability of its custom satellite imaging reports. We conclude that the custom reports are nontaxable information services because they qualify for the exclusion for information services that are personal or individual in nature and are not and may not be substantially incorporated into reports furnished to other persons.

Facts

Petitioner is an Illinois limited liability company that provides a satellite imaging analysis service. Petitioner provides two types of reports to its customers: (1) standard reports that are provided to multiple customers; and (2) custom reports that are tailored to the needs of an individual customer and are provided only to that customer. Petitioner maintains that it collects sales tax on its sales of the standard reports and requests an opinion on the sales tax treatment of only the custom reports.

A typical customer for a custom report is an investment company that wants information about a particular business facility that the customer may use to make investment decisions. Petitioner enters into a Research Agreement ("Agreement") with the customer, which specifies the facility to be imaged and requires Petitioner to provide monthly custom reports about the facility. Under the agreement, Petitioner obligates itself to obtain high-resolution satellite images with respect to the specific business facility requested by the customer and perform quantitative analysis of the images. This analysis involves evaluating activities, change, growth, and trends at the facility. The report also will identify key areas, activities, and assets for continued monitoring based on Petitioner's research specific to the customer. The custom report includes copies of the satellite images on which the analysis is based.

Petitioner must place a special order with a satellite imagery company in order to obtain the satellite images provided as part of its customer report. The satellite imagery company typically grants Petitioner a license to reproduce the satellite images it provides as part of its custom report service, but Petitioner is prohibited from transferring to its customers the right to reproduce the satellite imagery. Petitioner incorporates the magnified, high resolution satellite imagery, along with corresponding analysis, in the custom report. The custom reports are sent to the customer in the form of an Excel file and/or a PDF slide deck. Petitioner reviews the custom report with the customer to determine key areas, activity, and assets for continued monitoring. Petitioner also recommends the minimum frequency with which monitoring is required in the

event the customer wants to continue with Petitioner's consulting services. On its payment schedules and invoices for custom reports, Petitioner describes its service as professional fees for imagery analysis of the facility.

Under the Agreement, the customer is prohibited from providing information contained in the custom reports to others or otherwise disclosing Petitioner's information to any third parties. However, the customer does have the right to use the information provided as part of Petitioner's consulting services in providing advice to its investment customers. The Agreement provides the customer with a worldwide, non-transferable, non-exclusive perpetual license to make internal use of the materials provided in connection with the custom reports. The customer also may use the custom reports to manage its investment customers' portfolios. However, Petitioner's customer may not provide its customers with copies of the custom reports prepared by Petitioner pursuant to the Agreement.

The Agreement prohibits Petitioner from providing any information from a custom report to anyone other than the customer that purchased it. Petitioner also is prohibited from (1) disclosing or licensing any of the consulting research, (2) using the custom research for any purpose other than for providing consulting services to the customer, and (3) disclosing that it is aware of or possesses any of the custom research to any person other than the customer. Petitioner also is prohibited from reusing any analysis, materials, or reports created as a result of the Agreement.

Analysis

Tax Law § 1105(c)(1) imposes sales tax on receipts from the sale of the service of furnishing information by printed, mimeographed, or multi-graphed matter, or by duplicating written or printed matter in any other manner. *See also* Tax Law § 1105(c)(9). Excluded from the tax on information services, however, is an information service that is "personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to . . . persons" other than the customer. Tax Law § 1105(c)(1). The exclusion has been held to apply only when the information conveyed to the customer relates exclusively to the customer in question, and the service provider is prohibited from selling the same information to third-parties. *See Matter of New York Life Ins. Co. v. State Tax Comm'n*, 80 AD2d 675, *aff'd sub nom. Matter of Metropolitan Life Inc. Co. v. State Tax Comm'n*, 55 NY 2d 758 (1981). Furthermore, the information must not be derived from a common source or a widely accessible repository that could cause the same information to be substantially incorporated in a report furnished to others. *See Matter of ADP Automotive Claims Servs. v Tax Appeals Tribunal*, 188 AD2d 245 (3rd Dep't 1993); *Matter of Towne-Oller and Assocs*, 120 AD2d 873, *supra*.

Petitioner's custom reports qualify as an information service since their primary function is to disseminate information. *See Matter of Towne-Oller and Assocs.*, 120 AD2d 873, *supra*. Thus, the only issue is whether its custom report service qualifies for the exclusion in Tax Law § 1105(c)(1), *i.e.*, whether such reports furnish information that is personal or individual in nature and that is not or may not be substantially incorporated in reports furnished to other persons. Petitioner provides its facility image and analysis as a result of a request from a specific

customer. It is precluded by contract from providing the facility images or its analysis to others and it may not reuse any of its analysis or materials for other customers. Moreover, its facility images do not come from a common source or database, as each facility image must be special ordered from a third-party satellite imagery company, which then must take the image at the next suitable opportunity. This distinguishes it from *Matter of RetailData, LLC* (Tax Appeals Tribunal, March 3, 2016), where, in concluding that the pricing information at issue there was widely accessible and thus did not qualify for the exclusion, the Tribunal emphasized that the information there “sat on shelves.” Accordingly, Petitioner’s custom report service qualifies for the exclusion for personal or individual information in Tax Law § 1105(c)(1) and is not subject to tax. See *Westwood Pharmaceuticals, Inc. v. Chu*, 164 AD2d 462 (4th Dep’t, 1990); TSB-A-92(51)S.

DATED: July 31, 2017

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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.