STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from ███████████████████████ (Petitioner). Petitioner asks whether its sales of digital document services are subject to sales and compensating use tax (tax). We conclude that Petitioner's sales of digital document services are not subject to tax.

Facts

Petitioner provides digital document services for document intensive business processes. Petitioner typically provides its services with respect to invoices for accounts payable departments. Petitioner's services include: on- and off-site document scanning and data extraction and capture, delivery of customer data and electronic documents through digital workflow, and hosting of customer data and electronic documents in a digital repository (detailed below).

Petitioner does not license or provide software to its customers. However, Petitioner may charge the customer to modify the customer's own software to render that software compatible with Petitioner's software.

<u>Product A</u>

Product A includes document capture and scanning and delivery of customer data back to the customer. Product A handles all varieties of document formats and delivery channels including: USPS (PO Box), courier, email, fax, secure file transfer protocol (SFTP), digital media, and direct attachments to digital workflows. Product A is integrated with Product B and Product C (described below) for delivery of electronic documents and extracted data to the customer.

Petitioner provides the ability to upload electronic documents directly via its upload portal for customers that use electronic or scanned documents. Petitioner accepts any attachment format for documents that are entered into the system via web portal, fax or email. Each customer is assigned an email box for email attachment processing and email boxes are automatically checked through the day and night, on a schedule specific to each customer's needs.

Attachments are converted to a common file format (PDF) and processed. Petitioner's employees monitor the processing stage of each email batch throughout the conversion process.

If there is an issue during processing, the employee can immediately remedy the problem. Physical documents are scanned as part of Product A's process and scanning can be done at Petitioner's location or on-site at the customer's location. Petitioner uses its own employees to manually open physical mail, scan physical documents, and enter data.

The PDFs created by Product A are either returned to the customer—usually through SFTP—or hosted on Product D (described below).

Product B

Product B uses advanced data extraction and capture technologies while incorporating Petitioner's own subject matter experts (SMEs) to capture customer data. Customer specific data is extracted from the documents and entered in Petitioner's quality assurance (QA) application that programmatically performs data validation and flags potential errors. Petitioner validates the captured data against the customer supplied data file, for example, the customer's accounts payable file, as well as Petitioner's internally developed data files.

Petitioner's QA operators review all suspected errors and issues that cannot be resolved and cleared by the primary level of Petitioner's capture process. Only if the QA operator determines a customer exception exists will it be presented to the customer via Product C for resolution. Petitioner's SMEs review all exceptions and can clear most exceptions without involving the customer. Captured data is returned to the customer directly through the customer's own system or through Product C or Product D.

Product C

Product C is a 100% digital process for document approval and exception handling. Product C integrates with customer business and accounting systems to validate documents and shepherd documents through the review and approval process. Records that exceed a certain threshold can be automatically diverted to Petitioner's threshold approver to identify potential duplicates and other discrepancies.

Each document process is automatically recorded in Product C's database, providing a comprehensive audit trail of all actions performed. Completed documents, along with the supporting documentation, can be automatically forwarded to Product D—a hosted document repository that provides customers the ability to store and access their electronic document archives electronically via the web. Product C and Product D both offer full search capabilities that can be filtered according to customer specific user rights.

Product D

Product D hosts customer document images on-demand in its own secure cloud. A customer can access its documents at any time from any location through a password-protected website equipped with a customized document search engine. Because Product D stores the

customer's document images in Petitioner's cloud, the documents are available to the customer in the event of a disaster or disruption to the customer's facilities. Petitioner ensures the security of the customer's electronic documents through full backup of the repository to a secure off-site location every 24 hours.

Products A, B, and C are integrated and sold together. Product D also is typically integrated and sold with the other products, but could be sold separately, depending on the customer's need. Petitioner's charges for each service are per document page serviced.

Analysis

The Tax Law imposes tax on sales of tangible personal property and specific enumerated services. *See* Tax Law § 1105. As relevant here, Tax Law § 1105(c)(1) imposes tax on the receipts from every sale, except for resale, of:

> 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.

Product A receives and converts a customer's digital or tangible documents to PDFs and returns those PDFs to the customer—typically via secure file transfer protocol (SFTP)—or hosts the PDFs on Product D. Converting information from one form to another without changing its intelligence is not a taxable information service and is not an otherwise enumerated taxable service. *See Finserv Computer Corporation v. Tully*, 94 AD2d 197 (3rd Dept. 1983) *aff'd* 61 NY2d 947 (1984). This service is not taxable whether the PDFs are delivered to the customer tangibly or electronically. *See* TSB-A-16(31)S.

Products B and C are both information services because each goes beyond changing the format of the customer's information to include compiling, analyzing and organizing the information and providing that value-added information to the customer. Product B captures customer specific subsets of data from the customer's documents, validates that data, and flags and resolves potential errors in the data, before returning that data to the customer. Product C validates the customer's documents and identifies and resolves duplicates and other discrepancies within the documents and provides an audit trail of all actions taken. These refinements all add to the intelligence contained in the original information and constitute an information service. *See Id.* at 199*; ADP Automotive Claims Services, Inc. v. Tax Appeals Tribunal*, 188 AD2d 245 (3rd Dept. 1993).

However, Products B and C are excluded from the tax on information services because the service is performed on customer information that is personal and individual in nature and is never provided to persons other than the customer. Petitioner captures, analyzes, and refines the

customer's own documents and provides the refined documents and captured data to the customer only.

Product D—electronic data storage—is not an enumerated service and is not subject to tax. *See* TSB-A-16(19)S.

Thus, whether these products are sold separately or together, the receipts would not be subject to tax.

Finally, Petitioner's charges for customizing a customer's existing software to make it compatible with Petitioner's software are exempt from tax. *See* Tax Law § 1115(o).

DATED: November 17, 2020

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