

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance (“the Department”) received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether receipts from her coaching/facilitation service are subject to tax when a self-assessment questionnaire is administered to clients as part of that service. We conclude that Petitioner’s service is not subject to sales tax.

Facts

Petitioner provides a coaching/facilitation service that teaches techniques for effective listening and communication in a business environment. As part of Petitioner’s service, Petitioner administers a DISC self-assessment questionnaire to a client’s employees. A DISC Assessment measures certain behavioral characteristics (dominance, influence, steadiness and conscientiousness), and is used to provide insights to clients about their employees’ behavioral style and how it affects their communications and interactions in a business setting. Petitioner purchases the behavior self-assessment tool from a local distributor, which obtains the assessment tool from Target Training International (TTI). Petitioner is not charged sales tax on this purchase. Petitioner provides a client’s employees with personal login information, which allows the employee to access the assessment on the TTI website and answer a series of multiple-choice questions. Petitioner’s sample letter explaining the DISC Assessment process advises that the Assessment, and the resulting report will provide the employee with “a better understanding of [his or her] own behaviors, and a greater ability to recognize and adapt to the behavioral styles of the people around [him or her].” Petitioner and the employee both receive the report via email, upon the completion of the assessment.

Petitioner provided a sample report, which is 23 pages in length and includes sections discussing on the employee’s “general characteristics,” “value to the organization” (*e.g.*, talents and strengths), “perceptions” (*i.e.*, self-perception and perception by others); and “descriptors” based on DISC criteria. The report provides details about the employee’s “natural and adapted style” with respect to problem solving, interactions with others, pace and consistency, and his or her reaction to procedures and constraints. The report also provides a “communications checklist,” including specific advice on how to and how not to communicate with the employee, and lists “keys to motivating” and “keys to managing” the employee.

Petitioner uses the results of the report in a coaching/facilitation setting to instruct an employee how to communicate more effectively. Petitioner does not maintain a database of report information. Petitioner shares the report only with the employee and, with the employee’s

permission, with the employer who engaged Petitioner's services. Petitioner does not separately charge for the DISC Assessment.

Analysis

Sales and use taxes are imposed on retail sales of tangible personal property and the sale, except for resale, of certain services. *See* Tax Law §§ 1101(b)(6); 1105(a), (c). Among the services subject to tax is 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. 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(2)

Excluded from the tax on information services is 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 by the person who has collected, compiled or analyzed such information. *See* Tax Law § 1105(c)(1); *see also* Tax Law § 1105(c)(9); 20 NYCRR 527.3(b)(2). Information is not "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 (1993), *lv. denied*, 82 NY2d 655 (1993); *Allstate Insurance Company v. State Tax Commission*, 115 AD2d 831 (3d Dept. 1985), *affd.* 67 N.Y.2d 999 (1986).

Petitioner's coaching/facilitation service, by itself, is not among the services subject to sales tax. However, if taxable property or services are provided with the coaching/facilitation service for a single charge, the entire charge is subject to sales tax. *See* TSB-A-90(33)S (entire receipt for behavioral consulting services performed in conjunction with production of training videotapes for a single charge was subject to sales tax).

Petitioner provides access to the DISC self-assessment tool and the resulting report as part of its coaching service. This report is not a *de minimis* component of the coaching/facilitation service, because it informs Petitioner's coaching approach and provides insight to Petitioner and the employee about how the employee can improve and adapt his or her communication style when working with others. Moreover, it provides a detailed report directly to the employee that analyzes the employee's behavioral characteristics and how those characteristics affect his or her communications and interactions with others in a work environment. This report constitutes an information service, because it compiles the employee's responses and analyses them according to certain behavioral criteria. Because the report is provided with Petitioner's coaching service for a single charge, we must consider whether the report is a taxable information service. *See* TSB-A-96 (10)S (entire receipt for consulting services provided in conjunction with video tapes for a single charge is subject to sales tax).

Reports on the behavioral tendencies of a particular individual, based upon information provided by that individual, are personal or individual in nature. *See* TSB-A-92(41)S. The

