TSB-A-20(31)S Sales Tax July 14, 2020

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 requests guidance on whether it can accept Direct Payment Permits from its customers where the dispatched location of its security guards is known at the time of sale. We conclude that Petitioner must refuse to accept Direct Payment Permits for any sale where it is not impossible at the time of acquisition of services to determine the taxable nature of those services.

Facts

Petitioner operates a security guard service company. Currently, Petitioner accepts Direct Payment Permits issued by the Department from its customers at the time of sale for all sales. At the time of its sales, Petitioner has knowledge of the location to which a security guard will be dispatched. Given the knowledge of the location to which the security guard will be dispatched and at which services will be performed, Petitioner knows at the time of sale whether its services are taxable protective services pursuant to Tax Law § 1105(c)(8). Petitioner seeks guidance as to whether a Direct Payment Permit can be accepted in all sales or, if not, when it must refuse to accept the permits and collect tax on its services pursuant to Tax Law § 1105(c)(8).

Analysis

Tax Law § 1132(c)(2) provides that the Commissioner may authorize a purchaser, who "acquires tangible personal property or services *under circumstances which make it impossible at the time of acquisition* to determine the manner in which the tangible personal property or services will be used, to pay the tax directly to the Commissioner and waive the collection of the tax by the vendor" (emphasis added). This authorization is documented by way of a Direct Payment Permit. The statute provides further that a vendor shall not be required to collect tax from a purchaser who furnishes a valid Direct Payment Permit in proper form.

Sales and Use Tax Regulation 532.5 explains that a Direct Payment Permit is a notice to a vendor that the holder is authorized to pay directly to the Department any tax due on purchases any tax due on purchases. The regulation states that "[t]he vendor's responsibility for the

collection of tax from the permit holder is waived upon receipt of such permit." *See* 20 NYCRR 532.5(a). However, the regulation expressly states that the permit may not simply be used as a device to defer payment of the sales tax on purchases. *See* 20 NYCRR 532.5(e)(2)(i).

Petitioner asks whether it can accept Direct Payment Permits from its customers for all sales. In selling and scheduling its services as a security guard service company, Petitioner has knowledge of the location to which its guards will be dispatched and at which services will be performed. Petitioner acknowledges that its services would be subject to taxation where security guard services are provided within the State. *See* Tax Law § 1105(c)(8).

Accordingly, a Direct Payment Permit cannot be accepted routinely by Petitioner for every sale. The permit must not be used by a holder and Petitioner must not accept such permit where it is not impossible at the time of acquisition to determine the manner in which the purchaser will use its services. If Petitioner knows that the security services are clearly taxable at the time of sale, as is the case here for certain sales, it must refuse to accept the Direct Payment Permit for these sales and collect tax pursuant to Tax Law § 1105(c)(8).

It must also be noted, as the Department set forth in TSB-A-98(44)S, misuse of a Direct Payment Permit by the holder may be grounds for revocation of the permit. *See* 20 NYCRR 532.5(g).

DATED: July 14, 2020

/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.