

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-86(50)S
Sales Tax
December 4, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S851011A

On October 11, 1985, a Petition for Advisory Opinion was received from Fidelifacts/Metropolitan New York Inc., 50 Broadway, New York, New York 10004.

The issue raised is whether services performed by Petitioner as described below are "protective services and detective services" within the meaning of Section 1212-A (h)(2)(i)(B) of the Tax Law.

Petitioner is an investigative agency whose services include the performance of investigations of applicants for employment with Petitioner's clients. The reports prepared by Petitioner include information regarding the job applicants' education, employment, financial standings, personal habits and recreational activities. Petitioner's reports contain verification of information listed on the applicants' job applications. However, they also contain information obtained by interviewing previous employers, neighbors and references and by searching police files and court records. In compliance with the Fair Credit Reporting Act, job applicants are always notified in advance that they will be the subject of inquiries and give written authorization for such reports to be furnished to prospective employers.

Section 1212-A(h)(2)(i)(B) of the Tax Law authorizes any city having a population of one million or more to impose a tax at a rate not to exceed four percent on the receipts from:

(B) Protective services and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature, whether or not any tangible personal property is transferred in conjunction therewith, except to the extent otherwise taxable under article twenty-eight of this chapter.

Petitioner contends that its reports should be classified as "information services" rather than detective services and thus not subject to the 4% tax on detective services imposed by New York City. Petitioner argues that its reports are similar to those purchased by insurance companies. These reports were held not subject to tax. See: Metropolitan Life Insurance Co; Mutual Life Insurance Co. Decision of the State Tax Commission, April 15, 1985, TSB-H-85(129)S.

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Section 1212-A of the Tax Law is intended to apply to protective and detective services of every nature, including but not limited to personal or business protection; divorce work; suspect surveillance; the finding of missing persons or stolen funds; the investigation of actual or suspected thefts; the location of missing property; the handling of criminal cases and the performance of polygraph tests and electronic sweeps. Detective services also include investigations for the purpose of obtaining information with reference to the identity, habits, conduct, movements and whereabouts of persons. (see: 32 NY Jur, Investigators and Private Detectives 1). Therefore, the type of investigation conducted by Petitioner qualifies as detective services within the meaning of section 1212-A of the Tax Law. Petitioner may not rely upon the Decision of the State Tax Commission in Metropolitan Life Insurance Co., Mutual Life Insurance Company, cited above, since Petitioner did more than merely verify information listed on an application.

Accordingly, Petitioner's services, as described above, are subject to the tax imposed under section 1212-A(h)(2)(i)(B) of the Tax Law.

DATED: December 4, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.