

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

TSB-A-87(2)S
Sales Tax
December 15, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860908B

On September 8, 1986, a Petition for Advisory Opinion was received from McCarthy & Evanick, 60 South Swan Street, Albany, New York 12210.

The issue is whether the receipts, in whole or in part, from obtaining and furnishing to a bank or other commercial lender, of a copy of a public record (such as a deed or mortgage) recorded in the office of a county clerk are subject to sales tax under 1105(c)(1) of the Tax Law.

Petitioner describes the flow of the transaction as follows:

A bank or other commercial lender directs its attorney to obtain for it a copy (certified or uncertified) of a first mortgage instrument given by a potential customer for a second mortgage loan in connection with consideration of the mortgage application. The lender may request a copy of the customer's deed as well. The lender understands that it will be billed by the attorney for his fee and his disbursements in obtaining the copies from the county clerk's office in the county where the premises are located.

The attorney directs an abstract company or a title insurance company to advance the registry fee to the county clerk for the copy and to physically obtain the copy or copies and forward them to him with its statement for services and disbursements. The abstract company advances the registry fee for the copy to the county clerk and forwards the copy to the attorney with its statement for services, including the disbursed registry fee separately stated. The attorney, in turn, forwards the copy to the lender and send the latter a statement for professional services which include the attorney's fee and, separately stated, the disbursement to the abstract company for its services and for the registry fee for the copy.

The attorney retains a copy of the document for his files and may review or otherwise use it in the future if the lender requests his professional advice or assistance in closing the potential second mortgage loan.

Petitioner asserts that:

- I. The receipts from the obtaining and furnishing of public documents by the abstract company are not subject to sales tax because the abstract company is merely providing a delivery service or, in the alternative, if the service is deemed to be an information service, that the abstract company is acting in a representative capacity for the attorney.
- II. The receipts from the obtaining and furnishing of public documents by the attorney are not subject to tax for the same reasons as stated in number "I".

- III. Even if the service provided by the abstract company to the attorney is a taxable information service, the tax should be calculated on the abstract company's fee alone and not on the registry fee paid to the county clerk since the attorney could have purchased the document directly from the county clerk without paying a sales tax.

Section 1105(c)(1) of the Tax Law imposes a tax on "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 and excluding the services of...persons acting in a representative capacity...."

Section 1116(a)(1) of the Tax Law exempts from the sales tax "The state of New York, or any of its agencies, instrumentalities...or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons".

In Allstate Insurance Company v. State Tax Commission, 115 AD2d 831 (1985), the court held that the furnishing of New York State Department of Motor Vehicle records by Hooper Holmes, Inc. to Allstate was the furnishing of an information service even if the information was collected from a single source. Additionally, the court held that the exclusion from tax for information which is personal or individual in nature refers to uniquely personal information and does not apply to information filed with a governmental agency as a public record to which there is unlimited public access.

The sale by a county clerk of certified or uncertified copies of mortgage instruments is exempt from tax pursuant to section 1116(a)(1) of the Tax Law. See Allstate Insurance Company v. State Tax Commission, *supra*.

The furnishing of copies of records contained in a county clerk's office by the abstract company is the furnishing of an information service and is not a delivery service even though the information is collected from a single source. Allstate Insurance Company, *supra*. Such information is not the type of uniquely personal information referred to in the exemption for personal or individual information.

Accordingly, the sale of this information service by an abstract company to an attorney is subject to tax unless otherwise exempt.

Whether an abstract company is acting in a representative capacity for an attorney is a question of fact which must be resolved based upon the circumstances of each case. However, it should be noted that it is not sufficient that an abstract company merely states that it is acting in a representative capacity. To be deemed a representative of an attorney, the abstract company must clearly disclose to the county clerk the name of the attorney for whom the abstract company is acting

as a representative; the abstract company must obtain, prior to the acquisition, and retain written evidence of its representative status with the attorney. The amount billed to the attorney, exclusive of its service fee, must be the same as the amount paid to the county clerk. Additionally, the abstract company may not use the information service for its own purposes.

Section 1101(b)(3) of the Tax Law defines "receipts" for purposes of determining the amount of taxable sales as "[t]he amount of the sales price of any property and the charge for any service taxable under this article...without any deduction for expenses...."

Accordingly, when an abstract company is required to collect sales tax, it must collect sales tax on the entire amount charged to the attorney. It may not reduce its taxable receipts by the amount it paid as a fee to the county clerk. Such fee is deemed an expense for which no deduction is allowed. Furthermore, the exemption provided by section 1116(a)(1) of the Tax Law applies only to sales of such services by the county clerk. It does not apply to subsequent sales made by non-exempt entities.

Finally, it is noted that the services of an attorney are not within the scope of the sales tax. Accordingly, fees charged by the attorney for professional services and for disbursements to the abstract company are not subject to sales tax.

DATED: December 15, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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