

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-07(12)S
Sales Tax
April 16, 2007

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S061024B

On October 24, 2006, the Department of Taxation and Finance received a Petition for Advisory Opinion from Verified Identity Pass, Inc., 1270 Avenue of the Americas, Suite 508, New York, New York 10020. Petitioner, Verified Identity Pass, Inc., provided additional information pertaining to the Petition on January 18, 2007.

The issue raised by Petitioner is whether charges to individual travelers for enrollment in Petitioner's Registered Traveler Program as described below are subject to sales tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is a Delaware corporation authorized to do business in New York State. Petitioner will launch its Registered Traveler Program ("RTP") under the name "Clear" at John F. Kennedy International Airport, Terminal 7, which is located in New York State. Terminal 7 will become the first facility in New York State to offer Clear RTP.

Clear RTP is authorized under the Aviation and Transportation Security Act as a means of providing an expedited security screening process for individuals who voluntarily submit certain biometric and biographic information to an enrollment provider such as Petitioner. The enrollment provider (in this case Petitioner) forwards this information to the Transportation Security Administration ("TSA"). TSA, which is a division of the United States Department of Homeland Security, uses the information Petitioner obtains from an individual to perform a security threat assessment of the individual. Clear RTP allows expedited access through airport security checkpoints to those individuals who successfully undergo TSA's security threat assessment. Clear RTP is a private sector program that is supported and regulated by TSA with distinct roles and responsibilities for each participating entity.

Petitioner is an enrollment provider and service provider in Clear RTP and, in that capacity, is responsible for collecting personal biographic and biometric information from individuals seeking to enroll in Clear RTP. After collecting the required information, Petitioner transmits the information to TSA via the Central Information Management System ("CIMS").

CIMS is a commercial entity that is not associated with Petitioner, the airlines, or the airports. CIMS is responsible for receiving and formatting the program enrollment data and transmitting such information to TSA. Based on such information, TSA then conducts a security threat assessment of the individual and transmits its determination as to whether the individual is approved or not approved for Clear RTP to Petitioner. Petitioner will then inform the individual of TSA's determination, and, if the individual is approved, Petitioner will issue a Clear RTP membership card (Clear Card) to the individual. The approved individual is then permitted to

pass through an expedited security screening process at the airport using the biometric information embedded on the Clear Card as a means of proving the individual's identification.

Each of the steps described above (enrollment, delivery of the biometric information, receipt of the Clear Card, and utilization of RTP) may occur at different locations in the United States. TSA requires all RTP service providers to have interoperable systems. For example, a California resident may apply online at a business location in New York, provide the biometric information at Petitioner's enrollment station at the Orlando International Airport, receive the Clear Card in New York, and use the service at Terminal 7. This may all be done within the Clear RTP system or in conjunction with other service providers' systems once such systems are operational. At this time, Petitioner is the only authorized and operating private sector provider for RTP.

Petitioner charges individuals who enroll in Petitioner's Clear RTP program an annual fee for the provision of its service, including the collection and transmittal of the individual's personal information to TSA. This annual fee includes the fee to be paid by Petitioner to TSA for TSA's provision of its screening services, including the security assessment review. Neither Petitioner's fee nor TSA's vetting fee is charged to the individual's account until the individual has been accepted into Clear RTP. If, for any reason, TSA revokes the individual's privileges under Clear RTP, the Card is deactivated and the individual will receive a pro-rated refund of the Clear RTP fee; however, the TSA portion of the fee will not be refunded.

Applicable law

Section 1105(c) of the Tax Law imposes sales tax upon the receipts from every sale, except for resale, of certain enumerated services.

Opinion

Petitioner is an enrollment provider and service provider in Clear RTP and, in that capacity, collects personal biographic and biometric information from individuals seeking to enroll in Clear RTP, provides the information to TSA so that TSA may provide a security threat assessment, and provides the enrolling individuals (Petitioner's customers) with the means to avail themselves of the advantages offered by enrollment in Clear RTP.

With respect to its described activities as an enrollment provider and service provider, Petitioner makes no sales of tangible personal property. Further, in performing such activities, Petitioner is not making sales of any of the enumerated services on which sales tax is imposed by section 1105(c) of the Tax Law. Accordingly, charges by Petitioner to applicants for enrollment in Clear RTP are not subject to sales or use tax.

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It is noted that any purchases by Petitioner of tangible personal property or services described in section 1105 of the Tax Law that are used to provide Petitioner's nontaxable service to its customers are not purchases for resale and may be subject to sales or use tax.

DATED: April 16, 2007

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division