

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-10(19)S
Sales Tax
May 3, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S080827B

On August 27, 2008, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its credit reporting services delivered in New York City and elsewhere in the State are subject only to the local City sales tax, or are also subject to State and local sales taxes.

We conclude that Petitioner's services are information services subject to State and local sales taxes pursuant to Tax Law §1105(c)(1).

Facts

Petitioner is a California-based corporation that provides tenant screening services as a consumer reporting agency on a national basis. Petitioner provides credit-reporting services to landlords and property management companies when they have applicants looking to rent dwellings from them. Petitioner states that it is a reseller of data supplied by all three national credit bureaus (Experian, TransUnion and Equifax) and falls under the federally mandated Fair Credit Reporting Act (the Act).

The Act (codified at 15 U.S.C. § 1681 et seq.) regulates the collection, dissemination, and use of consumer credit information. Consumer reporting agencies (CRAs) subject to the Act are entities that collect and disseminate information about consumers to be used for credit evaluation and certain other purposes. They hold the databases that are the origins of a consumer's credit report.

Section 603(f) defines a "consumer reporting agency" as any person "which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information ... for the purpose of furnishing consumer reports to third parties...." In turn, section 603(d) defines a "consumer report" as the communication by a CRA of "any information" that bears on a consumer's "credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living" and that is "used or expected to be used or collected in whole or in part" for the purpose of serving as a factor in establishing eligibility for credit or insurance to be used primarily for personal, family, or household purposes, employment purposes, or any other purpose authorized under section 604. An entity that meets the definitional requirement for a CRA in section 603(f) of the Act is covered by the law even if the only information it collects, maintains, and disseminates is obtained from "public record" sources.

Petitioner uses information it obtains from credit bureaus and other sources of public record information to prepare its tenant screening reports. Petitioner formats its reports so that its clients can better understand the contents and use the reports to determine if tenant applicants meet their renting criteria. Petitioner provided a sample tenant screening report. The report lists various "Default Criteria" and indicates whether the tenant applicant meets the criteria. The report summarizes the applicant's credit information, and includes the applicant's personal information such as name, address, SSN, etc., the

applicant's employment history, criminal history, record of previous evictions, and a listing of the applicant's credit accounts. The report also indicates whether the applicant is listed on a federal terrorist watchlist.

Petitioner began selling its services to customers in New York City in January 2005. On May 1, 2007, Petitioner purchased the assets of another tenant screening company located in New York State outside of the City, and began to serve a broader customer base in New York.

Analysis

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 (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), is subject to sales tax under Tax Law §1105(c)(1). Under the provisions of Tax Law §1105(c)(9), the furnishing or provision of an information service (other than an information service subject to tax under section 1105(c)(1) of the Tax Law) that is furnished electronically (whether via intrastate or interstate means) is subject to tax if the information to be taxed under section 1105(c)(9) would otherwise be subject to sales tax under section 1105(c)(1) were it furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner. Generally, if a common database is used to generate reports or otherwise disseminate information, the information sold is subject to sales tax under section 1105(c)(1) of the Tax Law even though the reports, screens, or displays of such information may be customized to meet the specific needs of customers. *See Rich Products Corporation v Chu*, 132 AD2d 175 (3d Dept 1987) *lv denied* 72 NY2d 802; *Towne-Oller & Assoc. v State Tax Comm*, 120 AD2d 873(3d Dept 1986); *Alan/Anthony, Inc.*, Adv Op Comm T&F, June 19, 1992, TSB-A-92(51)S.

Petitioner states that it is a consumer reporting agency subject to The Fair Credit Reporting Act (the Act). Petitioner assembles consumer credit information from credit reporting agencies that are also subject to the Act. Petitioner also collects and analyzes other information from public record sources and furnishes this information to customers (landlords and property management companies) in tenant screening reports that enable the customer to determine whether to rent to a tenant applicant. The information in these reports is obtained from publicly available sources, and may be substantially incorporated in reports furnished to multiple customers. In fact, Petitioner's sample tenant screening report indicates on page 1 that Petitioner copies information from public records, and Petitioner uses that information in its tenant screening report delivered to its customers. Accordingly, Petitioner's tenant screening services are taxable information services under Tax Law §1105(c)(1) or §1105(c)(9). *See* 20 NYCRR 527.3(a)(3), (4) which provide that credit reports or credit information services are subject to sales tax under §1105(c)(1). *See also Credit Bureau of Central New York, Inc. v State Tax Comm'n* (3 Dept 1984) 105 AD2d 1042; *CCB Management of Texas, Inc.*, Adv Op Comm T&F, TSB-A-91(14)S, January 23, 1991; *Rochester Credit Center, Inc.*, Adv Op Comm T&F, TSB-A-90(37)S, July 24, 1991 (concluding that credit reports are taxable information services.)

Section 1212-A(a)(3) of the Tax Law authorizes New York City to impose a local sales tax on credit rating, credit reporting, credit adjustment, and collection services, "except to the extent otherwise taxable under article twenty-eight of this chapter." As discussed above, Petitioner's tenant screening services are information services subject to tax under Tax Law §1105(c)(1) or §1105(c)(9). Because Petitioner's services are taxable under §1105, the services are not subject to tax under §1212-A(a)(3), regardless of whether the services may be credit rating or credit reporting services. Accordingly,

Petitioner's charges for its services are subject to State and local sales tax when the services are delivered to customers in New York State, both within and outside New York City. Charges for services delivered in New York City are subject to the combined Statewide tax rate, MCTD tax rate under Tax Law §1109, and local City tax rate imposed pursuant to Tax Law §1210. It should be noted that before August 1, 2008 the local City sales tax was imposed under Tax Law §1107. *See Summary of the 2008 Sales and Use Tax Budget Legislation*, TSB-M-08(9)S.

DATED: May 3, 2010

/S
Jonathan Pessen
Director of Advisory Opinions
Office of 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.