

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

TSB-A-11(3)S
Sales Tax
February 8, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S101122A

Petitioner [REDACTED] asks whether, in purchasing a title abstract for the purpose of preparing a title insurance policy, a title insurance company may provide a resale certificate (ST-120) to the vendor in lieu of paying sales tax. We conclude that the title insurance company may not so use a resale certificate because its purchase of the title abstract does not qualify for the resale exclusion. Petitioner also asks whether sales tax would still be due on its purchase of a title abstract for purposes of issuing a title insurance policy if the closing is subsequently cancelled, Petitioner does not issue the policy, but still must pay the title abstract company. We conclude that sales tax would still be due because the sale of the abstract to the title insurance company was not cancelled.

Facts

Petitioner is engaged in the business of providing real property title reports and title insurance, has a place of business in New York, and is registered to collect sales tax. Petitioner delivers its products to customers both within and without New York State. Petitioner purchases abstracts of title (or title searches) from vendors both within and without New York State.

Analysis

Tax Law section 1105(c)(1) imposes sales and use tax on the sale, except for resale, of the service of “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.” In *Sales and Compensating Use Tax Treatment of Certain Information Services*, TSB-M-10(7)S, the Department held, effective September 1, 2010, that sales of title abstracts are taxable as information services.

Section 1105(c)(1) excludes from tax the sale of an information service “for resale.” To satisfy the “for resale” requirement, the purchase of an information service must be exclusively for resale (*see Albany Calcium Light Co., Inc. v. State Tax Commission*, 44 N.Y.2d 986 [1978]; TSB-A-10(54)S). Accordingly, in *Abstracts of Title and Other Public Records Searches*, TB-ST-5, the Department held that a title insurance company may not buy a title abstract for resale if it intends to use that title abstract to prepare a title insurance policy. Thus, Petitioner may not use a resale certificate to purchase a title abstract for use in preparing a title insurance policy.

Petitioner also asks whether sales tax would still be due on its purchase of a title abstract for purposes of *issuing* a title insurance policy if the closing is subsequently cancelled, Petitioner does not issue any title insurance policy, but still must pay the vendor of the title abstract. The sales tax provides a credit in regard to cancelled sales (*see* Tax Law § 1132(e); 20 NYCRR § 534.6). That credit, however, would not apply because the sale of the abstract to Petitioner in the above scenario is

not cancelled. Accordingly, Petitioner must pay sales tax on its purchase of a title abstract under those circumstances.

DATED: February 8, 2011

/S/

DANIEL SMIRLOCK
Deputy Commissioner and 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.