

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

TSB-A-11(7)S  
Sales Tax  
March 21, 2011

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S101112C

Petitioner [REDACTED] law firm asks whether its provision of certified abstracts of title or certified abstract continuations are subject to New York State sales and use taxes. We conclude that the services are not taxable.

**Facts**

Petitioner is a law firm in the Southern Tier region of New York. It has an active practice in the area of real estate law.

In the Southern Tier, the standard real estate contract of sale requires the sellers to convey marketable title to the real property purchaser, which is generally accomplished by providing the purchaser with a certified abstract of title prepared by the seller's attorney. Attorneys also search title and provide certifications via continuations of these abstracts on subsequent property sales or mortgage refinances.

Petitioner provided a sample of its certified abstract:

We, [Petitioner Law Firm], do hereby certify that the following continuation of abstract, including Numbers One (1) to Three (3) sets forth all instruments, unsatisfied liens and existing encumbrances found from an examination of the indices in the applicable County Clerk's Office for:

DEEDS  
LEASES  
CONTRACTS  
MORTGAGES . . .

**Analysis**

Tax Law section 1105(c)(1) imposes sales tax on receipts from the service of furnishing information by printed, mimeographed or multigraphed matter, or by duplicating written or printed matter in any other manner. Effective September 1, 2010, sales of abstracts of title are taxable as information services (*see* TSB-M-10(7)S, *Sales and Compensating Use Tax Treatment of Certain Information Services*). The Department has held that a "guaranteed title search" is not taxable (*see Abstracts of Title and Other Public Records Searches Tax Bulletin*, TB-ST-5). That conclusion was based on Insurance Law § 6403(b), which makes the "guarantee[ing]" of "the correctness of searches for all instruments affecting titles to real property" the doing of an insurance business.

The issue here then is whether Petitioner's title abstract or title abstract continuation constitutes a guaranteed title search for purposes of Insurance Law section 6403(b). In an Opinion of the Office of

General Counsel dated February 23, 2011 (“OGC Opinion”), the New York State Insurance Department addressed the question whether the issuance of the certified abstract described therein was the doing of an insurance business under Insurance Law section 6403(b)(1). The abstract stated that the certification was being providing for "a valuable consideration” and that the items listed in the abstract “are correctly set forth, and that there is nothing more in said indexes which appears to affect the premises or any part thereof.” The OGC Opinion held that, because the abstract in that matter “guarantees the correctness” of its search, its issuance “is the doing of an insurance business” for purposes of section 6403(b)(1). The opinion further stated that the result would be the same if the seller of the certified abstract were an attorney.

In its sample certified abstract, Petitioner also certifies the completeness of the information presented. Thus, Petitioner’s abstract also qualifies as an insurance product and is not taxable as an information service.

In light of the above conclusion, we do not address other possible bases for the non-taxability of Petitioner’s certified abstracts, including whether the issuance of the abstract constitutes the practice of law or that Petitioner’s sale of the certified abstract qualifies for the exclusion in Tax Law § 1105(c)(1) for sales of information by persons functioning in a representative capacity.

DATED: March 21, 2011

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/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.