

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

TSB-A-13(27)S
Sales Tax
September 9, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120423A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its credit rating service is subject to sales tax and, if so, how the tax should be applied to two methods of delivery.

We conclude that Petitioner's credit rating service is not taxable under Tax Law § 1105(c)(1), but is taxable under Tax Law § 1212-A(a)(3), and that the sales tax is due if the service is delivered in New York City.

Facts

Petitioner provides ratings on debt offerings for issuers of structured products, insurers and other offerers for a fixed fee. Petitioner was hired by its client, a nationally known home lender based in North Carolina with offices within and without New York State, to provide credit ratings on a series of certificates issued by a New York common law trust. The specific credit rating is based on an analysis of the entity's financial information through specific evaluation guidelines created by Petitioner and on information provided by third party sources.

After Petitioner's analysis is completed, Petitioner prepares a ratings letter in New York City that is electronically mailed to the representative of the client who signed the engagement letter with Petitioner. Petitioner also issues a press release that the ratings letter is available to the general public. Petitioner asks if the entire charge for its service will be subject to tax if it does not have information about the location of the client's offices that will have access to the ratings letter. In addition, Petitioner asks whether delivery of the press release in New York would subject the entire charge to sales tax.

Analysis

We conclude that Petitioner's services are not subject to the State sales tax, but may be subject to the sales tax imposed by New York City on credit rating services. Tax Law § 1105(c)(1) imposes sales tax on:

(c) The receipts from every sale, except for resale, of the following services:

(1) 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 advertising or other agents, or other persons acting in a representative

capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news, and excluding meteorological services.

In this instance, Petitioner provides its client with a credit rating based upon information received from third parties and Petitioner's specific evaluation guidelines. Petitioner analyzes the information received and provides a credit rating, which is then furnished in a printed format and electronically mailed to the client. Petitioner does not furnish information to its client; rather, it evaluates and rates the client's financial products and provides that rating by letter to the client and to the general public by a press release. The client uses the rating to attest to third parties and not for its own use. Because Petitioner is not providing information to its client, Petitioner is not providing an information service. Tax Law § 1212-A(a)(3) authorizes New York City to impose a local sales tax on credit rating, credit reporting, credit adjustment, and collection services "whether rendered in written or oral form or any other manner, except to the extent otherwise taxable under article twenty-eight of this chapter." Section 11-2040 of the New York City Administrative Code imposes tax on those services. Petitioner's service constitutes a credit rating services because it consists of evaluating a client's financial information and providing a rating on the client's financial products. Because Petitioner's service is not an information service subject to tax pursuant to § 1105 of the Tax Law, its credit rating service is subject to tax under Tax Law § 1212-A(a)(3).

Section 11-2044 of the Administrative Code provides that the tax on credit rating services shall be administered and collected in the same manner as the taxes imposed by Article 28 of the Tax Law. The sales tax imposed by Article 28 of the Tax Law is a "destination tax." That is, the point of delivery or the point at which possession is transferred to the purchaser or the purchaser's designee controls both the tax incidence and the tax rate. *See* 20 NYCRR § 525.2(a)(3). If the representative of its client who signed the engagement letter is located in New York, when Petitioner delivers its ratings letter, whether electronically or in tangible form, to that representative, the report is subject to the local sales tax on credit services. Delivery of a press release to a media outlet in New York City is not delivery of a taxable credit ratings service and will have no effect on the taxability of other charges to the client.

DATED: September 9, 2013

/S/

DEBORAH R. LIEBMAN
Deputy 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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.