

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-96 (13)S
Sales Tax
February 28, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S950615A

June 15, 1995, a petition for Advisory Opinion was received from Thomas J. Brennan, P. O. Box 1147, Seldon, New York 11784.

The issues raised by Petitioner, Thomas J. Brennan, are whether the receipts from process serving, going to court to retrieve or file papers, and locating a defendant for service using information contained in a telephone book or public record, are subject to the tax imposed under section 1105(c)(8) of the Tax Law.

Petitioner presents the following facts.

Petitioner is not a licensed private investigator. Petitioner is licensed by the New York City Department of Consumer Affairs as a process server. Petitioner may receive a summons to be served on a defendant in a court action such as a marital dispute, eviction proceeding or an accident. Petitioner will then go to the address shown on the summons to serve the summons. If the defendant is no longer there, Petitioner will talk to neighbors or go to the post office to determine if the defendant moved. Petitioner will also use telephone directories, obtain records from the Department of Motor Vehicles, and access record databases on the Internet to locate defendants. If there is a new address on file, Petitioner will go to that address and attempt to serve the summons. If the summons is served, Petitioner is 'required to file an "affidavit of service" with the proper court.

Section 1105(c) of the Tax Law imposes a tax upon "The receipts from every sale, except for resale, of the following services:

* * *

(8) Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services provided by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred therewith.

While the Tax Law imposes a sales tax upon the receipts from the sale of all tangible personal property with certain exceptions, only specified services are subject to sales tax. Process serving, going to court to retrieve or file papers, and locating defendants using information contained in a telephone book or public record are not among the specified services. Therefore, the services described by Petitioner are not subject to sales tax. The fact that Petitioner's service may

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require Petitioner to perform certain activities that are in the nature of detective services will not change the nature of Petitioner's service which is process serving. Nor will such activities, when required to deliver process, convert Petitioner's service to one subject to tax. It should be noted, however, that if Petitioner hires someone to search for a defendant, that charge to Petitioner would be subject to the tax imposed under section 1105(c)(8) of the Tax Law.

DATED: February 28, 1996

/s/
DORIS S. BAUMAN
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.