

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

TSB-A-99(3)S
Sales Tax
January 27, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S981204A

On December 4, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Hotchkiss, Stone & Longtin, LLC., 16 ½ No. Main St., PO Box 492, Jordon, NY 13080.

The issue raised by Petitioner, Hotchkiss, Stone & Longtin, LLC., is whether the service of performing background checks of potential employees of school districts and private businesses by a private investigator is subject to sales and use tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is licensed as a private investigator pursuant to Article 7 of the General Business Law. Petitioner will be performing background checks of potential employees of school districts and private businesses.

Applicable Laws

Section 1105 of the Tax Law imposes sales tax, in part, upon:

(c) 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 by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

Section 1110(a)(C) of the Tax Law imposes compensating use tax on "any of the services described in paragraphs (1), (7) and (8) of subdivision (c) of section eleven hundred five."

Article 7 of the General Business Law states, in part:

§ 71. Definitions

1. "Private investigator" shall mean and include the business of private investigator and shall also mean and include, separately or collectively, the making for hire, reward or for any consideration whatsoever, of any investigation, or investigations for the purpose of obtaining information with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed for fee, hire or reward; ... the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other groups of persons, firm or corporation; the credibility of witnesses or other persons; the whereabouts of missing persons; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for fires, or libels, or losses, or accidents, or damage or injuries to real or personal property; ... or with reference to the conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors, and subcontractors; or the securing of evidence to be used before any authorized investigating committee, board of award, board of arbitration, or in the trial of civil or criminal cases. The foregoing shall not be deemed to include . . . persons engaged in the business of adjusters for insurance companies nor public adjusters licensed by the superintendent of insurance under the insurance law of this state.

Opinion

In Compass Adjusters and Investigators Inc. v Commissioner of Taxation and Finance (197 AD2d 38) the Court indicated that "among the detective and protective services covered by Tax Law § 1105(c)(8) are those provided by detective agencies, but the Tax Law contains no definition of detective services or detective agency." In this regard, the Court found it appropriate to equate the terms "detective services" and "detective agencies" to the "broad definition of private investigator" found in Section 71 of Article 7 of the General Business Law.

In the present case, the services performed by Petitioner fall within the scope of this definition. Moreover, Petitioner's services are not expressly excluded from this definition by any of the provisions of Article 7 of the General Business Law. Accordingly, receipts from the sales of Petitioner's background check services will be subject to State and local sales and use taxes under Section 1105(c)(8) of the Tax Law. See Resume Verification, Inc., Adv Op Comm T&F, March 27, 1997, TSB-A-97(14)S.

It is noted, however, that purchases made by organizations described in Section 1116(a) of the Tax Law are not subject to sales and use tax. Therefore, Petitioner's sales of its background check services to entities that have been designated as exempt organizations under Section 1116(a)

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of the Tax Law, or to United States or New York State government entities (e.g., school districts), will not be subject to sales tax provided Petitioner receives a properly completed Exempt Organization Certification (Form ST-119.1), or, in the case of government entities, a government purchase order, from the purchaser within 90 days of the date of delivery of the service. See Section 1132(c) of the Tax Law and Part 529 of the Sales and Use Tax Regulations. Petitioner must retain such exemption documents in its records in order to prove exempt sales. See Section 533.2 of the Sales and Use Tax Regulations.

DATED: January 27, 1999

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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