

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

TSB-A-99(58)S
Sales Tax
December 3, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990209A

On February 9, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Deloitte & Touche LLP, Two World Financial Center, New York, New York 10281-1414. Petitioner, Deloitte & Touche LLP, submitted additional information with respect to the Petition on March 15, 1999, June 30, 1999, October 4, 1999 and October 6, 1999.

The issues raised by Petitioner are:

(1) Whether the interactive educational services provided by Petitioner's client, (the "Company"), are subject to sales and compensating use tax.

(2) Whether the market risk management analysis and forecasting services provided by the Company to clients are subject to sales and use tax.

(3) Whether the credit risk management analysis and forecasting services provided by the Company to clients are subject to sales and use tax.

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

The Company provides interactive educational services via an Internet web site to students from both the corporate and academic worlds. The courses and exercises are designed to train students in the field of risk management, particularly in understanding the methodologies and techniques of risk quantification. Students are able to take courses and perform exercises interactively online. The Company's tutors score the exercises and provide timely feedback to the students. Furthermore, the tutors also respond to questions and monitor online discussions among the students concerning different risk management techniques.

As its principal service the Company provides, for an annual fee, risk management analysis and forecasting services to its clients. The Company provides its clients with an integrated service of analysis and forecasting of the risk associated with their portfolios of positions in financial instruments (the "market risk analysis and forecasting service") or their assumption of credit risk in their business or investment activities (the "credit risk analysis and forecasting service"). The clients are typically high-level, technically sophisticated financial professionals. The analysis provided by the Company is used for management information and reporting purposes, setting limits with regard to risk tolerance, allocation of resources, performance evaluation of investment portfolios and meeting of current and future regulatory reporting requirements.

TSB-A-99(58)S
Sales Tax
December 3, 1999

Specifically, the Company's market risk analysis and forecasting service works as follows. Initially, clients must download software provided by the Company. The software is provided via CD-ROM. This software is of no value in itself but is necessary to access the Company's on-line services. Clients also receive a password which enables them to connect to the Company's Internet website. Clients enter private portfolio data online into Company's server. The service then utilizes statistical modeling techniques to forecast various measures of the probability distribution of the value of that portfolio over time in order to measure the risk associated with that portfolio. The forecasts are based on the Company's forecast of the probability distribution of various financial time series whose value is highly correlated with the value of the portfolio, and the forecasts are updated daily as new data become available. Further, the service permits the client to display various measures of the risk associated with the portfolio in a format accessible to client management and government regulators.

The Company's service is an integrated analysis of portfolio risk that includes software, historical data and forecasting services. The historical financial data provided to subscribers are commonly available through other vendors of financial information, and such data sets are incidental to the basic analysis used in connection with the Company's software to make forecasts of the probability distributions of various time series. These forecasts are the basis for the Company's analysis of the risk characteristics of the client's portfolio.

In addition to the market risk analysis and forecasting service described above, the Company provides a credit risk analysis and forecasting service that is designed for analyzing and forecasting credit risk by electronic format or through interactive Internet exchange. Similar to the market risk service described above, the Company's credit risk analysis service utilizes historical data on default rates of various types of entities to forecast the probability distribution of future default rates. These forecasts are used to analyze the credit risk exposure of a client whose business or investment activities expose it to credit risk. In other respects, the credit risk analysis service is similar to the market risk analysis service, the difference being that the credit risk analysis service deals with analysis of credit risk from entities that may default on obligations. The market risk analysis service deals with analysis of market risk arising from changes in the market price of positions in financial instruments.

Clients also receive publications prepared by the Company that assist them in using the services and that keep them up to date with developments in the field of risk management analysis. There is no additional or separately stated fee for these publications, and they are provided incidental to the Company's integrated risk analysis. It would be unusual for a client to buy the Company's service unless it had a specific portfolio whose risk characteristics it wanted to analyze. The publications are never sold separately. In fact, they are given away free of charge, upon request by any non-clients of the Company.

Applicable Law

Section 1105 of the Tax Law provides in part:

Imposition of sales tax. On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article....

Section 1105(c) of the Tax Law imposes the sales tax upon the receipts from every sale, except for resale, of certain enumerated services.

Opinion

Issue #1

The Company provides interactive educational services in the field of risk management via the Internet. Educational services, whether or not provided in an interactive format over the Internet, are not among the services enumerated as taxable under Section 1105(c) of the Tax Law. Accordingly, the Company is not required to collect sales tax on charges for Internet educational services.

Issue #2

The Company's market risk analysis and forecasting service is an integrated service of analysis and forecasting of the risks associated with their client's position in financial instruments. Such service, in essence, is an electronic financial consulting service, which is not one of the services enumerated as taxable under Section 1105(c) of the Tax Law. Accordingly, the Company is not required to collect sales tax on charges to its clients for the market risk analysis and forecasting service.

Issue #3

The Company's credit risk analysis and forecasting service provides the service of analyzing and forecasting its client's credit risk. Such service is not one of the services enumerated as taxable

TSB-A-99(58)S
Sales Tax
December 3, 1999

under Section 1105(c) of the Tax Law. Accordingly, the Company is not required to collect sales tax on charges to its clients for the credit risk analysis and forecasting service.

DATED: December 3, 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.