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## Abstracts of Title and Other Public Records Searches

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### Introduction

Effective September 1, 2010, the Tax Department's interpretation regarding the application of the sales and use tax to the sale of abstracts of title and other public record searches was changed (see [TSB-M-10\(7\)S](#), *Sales and Compensating Use Tax Treatment of Certain Information Services*). The changes better reflect controlling judicial case law and administrative decisions, as well as achieve a more consistent interpretation of the statutory language regarding taxation of information services. The Tax Department's revised policy relating to the taxability of sales of abstracts of title as information services applies to sales of information delivered on or after September 1, 2010.

Taxable sales include sales to a title insurance company, to a prospective purchaser of real property, or to an attorney representing a prospective purchaser. Search companies making sales to title companies and their agents, title companies, examining counsels, and their customers are affected by this change. This Tax Bulletin explains how the sales and use taxes apply to these sales.

### Registration

If your business makes sales in New York State of taxable information services, you must register with the Tax Department and obtain a *Certificate of Authority*. The *Certificate of Authority* gives you the right to collect sales tax on your taxable sales and to issue and accept most New York State sales tax exemption certificates. See Tax Bulletins [Do I Need to Register for Sales Tax? \(TB-ST-175\)](#) and [How to Register for New York State Sales Tax \(TB-ST-360\)](#) for more information.

### Taxable sales

Sales of the following items are subject to sales tax unless the resale exclusion applies, as discussed below:

- Abstracts of title,
- Tax searches,
- Searches of municipal records for violations,
- Certified or noncertified copies obtained from the public record,
- Certificates of title and lien searches,
- Certificates of good standing and franchise tax searches,
- Cooperative unit searches, and
- Zoning lot parties-in-interest certifications.

Any charge by a municipality or county clerk for records is not taxable, but a search company's entire charge for the searches, including an amount charged to recoup the municipality's or county clerk's charge, is taxable. Also, if a sale is taxable, any related service charge imposed by a search company is also taxable.

### Nontaxable sales

- Title insurance or a guaranteed title search;
- Surveyor charges, whether or not done by a licensed surveyor, and property inspections;
- Charges for recording instruments and related service charges; and
- Charges of an examining counsel for examining an abstract, issuing a title report and closing title, when the title underwriter issues the title policy. (An attorney's issuance of a title report in other contexts may be subject to sales tax. See [Charges in Zones 1 and 2](#), below.)

### Abstracts of title

The sale of an abstract of title to be used in preparing a title insurance policy is taxable. The search company is responsible for the collection of any sales tax due when a title company or title agent orders an abstract/examination of title to be used in connection with the issuance of a title report and title policy. The search company must register for sales tax purposes and collect the sales tax due.

If a search company delivers an abstract of title and fails to charge sales tax to the title company or title agent who ordered the search, the title company or title agent is liable for the uncollected tax and must pay the tax to the Tax Department. See Tax Bulletin [Use Tax for Businesses \(TB-ST-910\)](#).

If the title company is not preparing a title insurance policy, but is reselling the abstract to its customer, the title company may purchase the abstract for resale by giving the search company a resale certificate. In that case, the title company would have to register for sales tax purposes, collect sales tax on the sale of the abstract to its customer, file sales tax returns, and remit the tax.

If an examination/abstract of title is performed by an employee of a title company or title agent rather than by an independent search company, no sales tax is due because payments to employees are not subject to sales tax.

**Note:** The listing of a liability amount on the abstract does not make a certified abstract into something other than an information service.

### Municipal searches

A search company's sale of the results of a search of municipal records is the sale of a taxable information service. At what level the tax would be imposed depends on whether the municipal searches are insured under a title insurance policy. If they are not insured by a policy, but are provided by the title company as an accommodation to its customer, then the title company's purchases of the municipal searches from a search company would qualify for the resale exclusion if the title company gave the search company a resale certificate. In that case, the title company would have to register for sales tax purposes, collect the tax on these sales to its customers, file sales tax returns, and remit the tax.

### Land surveys

Charges for performing a land survey by a licensed surveyor are not subject to sales and use tax. Therefore, the sales tax does not apply to a search company's charge for ordering and delivering the results of a land survey conducted by a licensed surveyor when the results of the land survey are incorporated into the title report.

When a non-surveyor provides a title company with a report on whether or not there are any changes to the state of facts shown on an existing land survey (which involves visually inspecting the real property and comparing it to the survey and noting any changes, such as a fence that was on the original survey but has been removed), the service is not taxable.

### **Additional charges by title companies**

When a title company, without issuing a title insurance policy, charges its customer for providing certified copies of instruments from the public records, or imposes a service charge, the charge for the copies and the service charge are taxable.

When a title company charges its customer for corporate certificates of good standing and reports as to whether a company owes franchise taxes, or imposes a service charge, the charges for the certificate and the additional service charge are taxable, assuming the title company does not issue an insurance policy that covers the searches.

If a title insurance company issues an insurance policy that covers the searches described above, its charges for the searches are considered to be part of the charge for the insurance policy and are not taxable.

A charge for a search of a private database or national search engine for the purpose of preparing an abstract of title is a charge for a taxable information service.

For complex transactions, extra charges may be made at or after the receipt of the application for examination of title. If these additional charges are for searches that are covered by a title insurance policy, the additional charges are for title insurance and are not taxable.

### **Charges in Zones 1 and 2**

New York State is divided into two zones for title insurance rate purposes. Title insurance premium rates in Zone 1 don't include the cost of a title abstract. Rates in Zone 2 do include the cost of an abstract.

In Zone 1, under certain circumstances the seller of the real property must obtain an abstract of title, while in other cases the purchaser of real property is the party that obtains the title abstract. In general, whoever buys the abstract of title from the search company must pay the sales tax to the search company, and whoever sells the abstract of title must register for sales tax purposes, collect the tax, file sales tax returns, and remit the tax due with the returns.

In Zone 1, in certain circumstances, an attorney in private practice who is representing one of the parties may prepare and issue a title report to a title company. Based on that title report, the company will issue a title insurance policy and remit a portion of the premium to the attorney. Since a non-lawyer is legally authorized to prepare a title report, a lawyer's sale of a title report is subject to sales tax as the sale of an information service. (However, the preparation of a title report by a lawyer, for which there is no separate charge, as an incidental part of a larger service is not taxable, as discussed under [Nontaxable sales](#), above.)

In Zone 2, where it is customary for the title company or the title agent to purchase the title abstract from the search company, the title company or the title agent is selling title insurance and is using the abstract in its business. Therefore, the title company or title agent must pay sales tax on its purchase of the abstract and should not collect tax on any portion of its charge for insurance. If the Insurance Department permits the title company to impose a charge to recoup the sales tax it paid, such a tax recovery charge would not be subject to sales tax.

### **Failure to close**

Tax is only due if there is a transfer of the abstract for a consideration. If title to the real property does not close or is canceled for any reason, and the failure of the closing to occur means that the title company does not owe the search company any payment for the abstract, then no tax would be due.

For example, assume a title company buys an abstract of title and tax search and pays the sales tax to the search company. It also obtains municipal searches from a search company and issues a resale certificate to that company. The title company prepares a title report and sends the report and the municipal searches (which are provided as an accommodation only and not as part of the insurance product) to its customer prior to closing. The closing is then canceled.

If the closing is canceled and the title company does not charge the would-be customer for those items, the title company doesn't have to collect tax. However, in that case, the title company would not be entitled to any refund of the sales tax it paid when it purchased the abstract.

If the title company or title agent imposes a cancellation charge on its customer for the title abstract, tax search, and municipals, and the items are not transferred to the customer, the cancellation charge would not be taxable.

### **Transactions involving out-of-state companies**

If an abstract is compiled in another state but then delivered to the customer in New York, the sale would be subject to State and local sales taxes at the combined rate in effect where it is delivered. If the search company that produces the report has nexus with New York, it would be a vendor and it must register for sales tax purposes, collect the tax due, and remit the tax with its sales tax returns. If the search company does not have nexus, then the title company to which the abstract was delivered would have to report and pay the uncollected sales tax directly to the Tax Department. If the title company is itself registered for sales tax purposes, it would report the tax due on its purchase of the abstract on its periodic sales tax return and pay the tax with that return. If the title company is not registered for sales tax purposes, the title company would report the tax on [Form ST-130, Business Purchaser's Report of Sales or Use Tax](#). See Tax Bulletins [Use Tax for Businesses \(TB-ST-910\)](#) and [Do I Need to Register for Sales Tax? \(TB-ST-175\)](#).

A company's purchase of an information service, such as an abstract of title, is not subject to New York State or local sales tax if the seller of the search service delivers the information to the purchaser outside of New York. If the purchaser of the information subsequently uses the information in New York, however, use tax would apply, as discussed below.

An abstract is considered to be used in New York if the abstract itself or a title report derived from the abstract is used in New York. For example, analyzing the abstract at a title company's main office in New York in the process of issuing a title insurance policy, or using a title report derived from the abstract at a closing in New York, would both constitute a use in New York.

If there is no delivery of the abstract to the purchaser in New York, and no use of the abstract information in New York (for example, the real estate transaction closes outside of New York and the abstract is not reviewed in New York), there would be no sales and use tax liability in New York.

In addition to owing state and local sales tax on its purchase, a title company that purchased an abstract that is delivered in New York would owe additional local use tax if it uses the abstract in another jurisdiction in New York that has a higher local tax rate than the local rate that applied in the jurisdiction where the abstract was originally

delivered, but only to the extent of the difference between the two rates. For purposes of the use tax, the abstract would be used in another jurisdiction if the abstract itself or the title report derived from the abstract were to be used by the purchaser (i.e., the title company) in the other jurisdiction.

*Example: A title company is asked by the prospective purchaser of real property to provide title insurance. The title company purchases an abstract of title and has it delivered to its offices in Jurisdiction 1, where the abstract is analyzed and a title report is prepared. The title company also mails a copy of the abstract to its independent attorney in Jurisdiction 2 for the preparation of an opinion of counsel. The title company also mails the title report at no charge to the seller in Jurisdiction 3. Lastly, the title company marks up a title report derived from the abstract at the closing in Jurisdiction 4.*

*Under these facts, the title company would only owe use tax in Jurisdiction 4 where the closing occurred, and would only owe use tax if the local tax rate in Jurisdiction 4 was higher than the local rate in Jurisdiction 1. The title company does not owe use tax in Jurisdiction 2 because it is the independent attorney, not the title company, that uses the abstract information there. Likewise, the title company does not owe use tax in Jurisdiction 3 because it did not use the abstract information there.*

### **Timing questions**

The taxability of the sale of abstracts of title and other taxable information services depends on when the information service is delivered to the purchaser. If the information service is delivered on or after September 1, 2010, it will be taxable, even if it was prepared prior to that date, unless the resale exclusion applies.

### **Down-dating**

Down-dating involves updating a title insurance policy in the context of a construction loan to guarantee that no additional encumbrances on the real property have occurred since the lender advanced the last loan increment. Charges to down date a policy in connection with a previously issued policy of title insurance are not taxable because they are considered to be charges for an insurance product. However, the title company's purchase of the information used in down-dating the title insurance policy would be taxable.

### **Charges for closing services**

A closer's duties usually involve marking up the title report, and accepting affidavits and checks from the parties to the closing, and transferring those documents to the title company. Charges for these services, including any gratuities that may be paid, are not taxable.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

**References and other useful information**

**Tax Law:** Section 1105(c)(1)

**Memoranda:**

[TSB-M-10\(7\)S](#), *Sales and Compensating Use Tax Treatment of Certain Information Services*

**Bulletins:**

[Do I Need to Register for Sales Tax? \(TB-ST-175\)](#)

[How to Register for New York State Sales Tax \(TB-ST-360\)](#)

[Use Tax for Businesses \(TB-ST-910\)](#)