

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-08(19)S
Sales Tax
April 28, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S070208B

On February 8, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from VR Investigations Inc., 200 Old Country Road, Suite 680, Mineola, New York 11501.

The issues raised by Petitioner, VR Investigations Inc., are:

1. Whether Petitioner's charges for providing detective and surveillance services to an individual are subject to sales tax.
2. Whether Petitioner's charges for providing detective and surveillance services directly for an insurance company are subject to sales tax.
3. Whether Petitioner's charges for providing detective and surveillance services for an adjusting company that may report to an insurance company are subject to sales tax.

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

Petitioner is a corporation engaged in the business of providing detective and surveillance services for individuals, insurance companies, and adjusting companies that are hired by insurance companies to look into various claims.

Applicable law and regulations

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 . . . 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.”

Section 70 of the General Business Law provides, in part:

Licenses

1. The department of state shall have the power to issue separate licenses to private investigators, bail enforcement agents and to watch, guard or patrol agencies. . . .

* * *

3. No person, firm, company, partnership, limited liability company or corporation shall engage in the business of furnishing or supplying for fee, hire or any consideration or reward information as to the personal character or activities of any person, firm, company, or corporation, society or association, or any person or group of persons, or as to the character or kind of the business and occupation of any person, firm, company or corporation, or own or conduct or maintain a bureau or agency for the above mentioned purposes without having first obtained from the department of state, as hereafter provided, a license so to do as private investigator for each such bureau or agency and for each and every sub-agency, office and branch office to be owned, conducted, managed or maintained by such persons, firm, limited liability company, partnership or corporation for the conduct of such business. Nothing contained in this section shall be deemed to include the business of adjusters for insurance companies, nor public adjusters licensed by the superintendent of insurance under the insurance law of this state.

Section 71(1) of the General Business Law provides, in part:

“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 sub-contractors; 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.

Section 2101(g) of the New York State Insurance Law provides, in part:

In this article, “adjuster” means any “independent adjuster” or “public adjuster” as defined below:

(1) The term “independent adjuster” means any person, firm, association or corporation who, or which, for money, commission or any other thing of value, acts in this state on behalf of an insurer in the work of investigating and adjusting claims arising under insurance contracts issued by such insurer and who performs such duties required by such insurer as are incidental to such claims and also includes any person who for compensation or anything of value investigates and adjusts claims on behalf of any independent adjuster . . .

* * *

(2) “Public adjuster” means any person, firm, association or corporation who, or which, for money, commission or any other thing of value, acts or aids in any manner on behalf of an insured in negotiating for, or effecting, the settlement of a claim or claims for loss or damage to property of the insured in this state caused by, or resulting from, any of the risks as enumerated in paragraphs four, five, six, seven, eight, nine and ten and subparagraphs (B) and (C) of paragraph twenty of subsection (a) of section one thousand one hundred thirteen of this chapter, not including loss or damage to persons under subparagraph (B) of paragraph twenty of subsection (a) of such section or who, or which, advertises for, or solicits employment as an adjuster of such claims, and shall also include any person who, for money, commission or any other thing of value, solicits, investigates, or adjusts such claims on behalf of any such public adjuster . . .

Opinion

Issue 1

Petitioner asks whether its charges for providing detective and surveillance services to an individual are subject to sales tax.

Sales tax is imposed on the receipts from every sale of tangible personal property unless specifically exempted in the Tax Law and on sales of services specifically enumerated in section

1105 of the Tax Law. Among the enumerated services are protective and detective services. See section 1105(c)(8) of the Tax Law. When Petitioner performs activities requiring a private investigator's license issued under Article 7 of the General Business Law, Petitioner's services are subject to sales and use tax imposed under sections 1105(c)(8) and 1110(a)(C) of the Tax Law. Such services are described in section 71(1) of the General Business Law and would include, for example, surveillance activities. See *Marvin Rosenthal*, Adv Op Comm T&F, January 24, 1997, TSB-A-97(2)S. Therefore, charges to an individual for detective and surveillance services are subject to sales tax at the rate in effect where the report is delivered.

Issue 2

Petitioner asks whether its charges for providing detective and surveillance services directly for an insurance company are subject to sales tax.

Insurance companies typically do not resell the investigative reports but use such reports to settle insurance claims brought by their clients. When Petitioner performs activities requiring a private investigator's license issued under Article 7 of the General Business Law, Petitioner's services are subject to sales and use tax imposed under sections 1105(c)(8) and 1110(a)(C) of the Tax Law, including when performed for an insurance company. Such services are described in section 71(1) of the General Business Law and would include, for example, surveillance activities. See *Marvin Rosenthal*, *supra*. Accordingly, Petitioner is required to collect sales tax on its charges for providing detective and surveillance services directly for an insurance company.

Issue 3

Petitioner asks whether its charges for providing detective and surveillance services for an adjusting company that may report to an insurance company are subject to sales tax.

Companies licensed as adjusters, pursuant to Article 21 of the New York State Insurance Law, are entities who, for compensation, either investigate and adjust claims arising under insurance contracts on behalf of the insurer; act on behalf of an insured person in negotiating or effecting the settlement of a claim; or solicit, investigate, or adjust such claims on behalf of a public adjuster. See section 2101(g) of the Insurance Law. A company licensed as an adjuster is not required to register as a private investigator under the provisions of Article 7 of the General Business Law when investigating claims arising under insurance contracts as provided in Article 21 of the New York State Insurance Law. See sections 70 and 71 of the General Business Law. The services of an adjuster licensed pursuant to Article 21 of the New York State Insurance Law are not enumerated services subject to sales tax under section 1105(c) of the Tax Law. See *Compass Adjusters and Investigators v Commissioner of Taxation and Finance*, 197AD2d 38; *Marvin Rosenthal*, *supra*.

It appears, therefore, that Petitioner's clients are purchasing Petitioner's services so the clients can perform adjusting services for their customers. As such, Petitioner's clients are not

making purchases of Petitioner's taxable services for resale. Since Petitioner's clients are using Petitioner's detective service to provide a nontaxable adjusting service, Petitioner is required to collect, and clients are required to pay, sales tax on the receipts from Petitioner's sale of detective and surveillance services described in section 1105(c)(8) of the Tax Law, regardless of whether the client is reporting to an insurance company. Under these circumstances, Petitioner's clients cannot properly issue resale certificates to purchase Petitioner's detective or surveillance services.

It should be noted, however, that pursuant to section 1105(c) of the Tax Law, protective and detective services may be purchased for resale. Thus, if Petitioner's client were a protective and detective service or some other service taxable pursuant to section 1105(c)(8) of the Tax Law, and such client subcontracted to Petitioner its duty to perform such protective and detective services to its customers, the client would be eligible to purchase Petitioner's subcontracted services for resale.

A person licensed as an insurance adjuster under Article 21 of the Insurance Law may also be licensed as a private investigator to perform detective services pursuant to Article 7 of the General Business Law. (See *Compass Adjuster and Investigators v Commissioner of Taxation and Finance*, 197AD2d 38). Such person might not be using Petitioner's services in the performance of adjusting services or other nontaxable services but could actually have contracted to perform detective service pursuant to licensure under Article 7 of the General Business Law. Petitioner's client could be reselling Petitioner's detective services as such. However, Petitioner has provided no information that indicates it has been hired as a subcontractor by another investigator licensed pursuant to Article 7 of the General Business Law, which investigator is, in turn, reselling Petitioner's services as part of a protective or detective service. Therefore, all of Petitioner's receipts from the sale of detective services, as described in this Opinion, are presumed subject to sales tax imposed under section 1105(c)(8) of the Tax Law.

DATED: April 28, 2008

/s/
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Taxpayer Guidance Division

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.