

**New York State Department of Taxation and Finance**  
**Office of Counsel**  
**Advisory Opinion Unit**

TSB-A-10(20)S  
Sales Tax  
May 6, 2010

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S090825A

Petitioner, [REDACTED], requests an Advisory Opinion about whether its litigation support services are subject to New York State and local sales and use taxes. We conclude that they are not subject to sales tax, regardless of the media on which the reports are delivered.

**Facts**

Petitioner provides a variety of litigation support services to its customers. It provides some of these services using its online proprietary software. Petitioner does not transfer the software to the customer or allow the customer to access the software by remote means, nor does the customer have the ability to enter data, manipulate data or run reports using the software. Typically, a customer preparing for litigation will seek Petitioner's services in processing voluminous documentation. Petitioner's technicians will gather copies of the customer's data, which are often stored on hard drives. The technicians consult with the customer about how the customer wants the data organized. Petitioner's technicians then use the proprietary software to index and sort the data to make it searchable by the customer, according to the customer's specifications. This software creates unique record identifiers that allow documents to be pinpointed using various search methods (e.g., concept, keyword, Boolean, etc.). The software has an online review tool that allows a customer to log in to review and batch its data. But, a customer can retrieve and print only the information as it was originally submitted. If a client wants an image modified to produce a TIFF (i.e., digital image file) or for embedding, the work must be done by Petitioner. The customer's indexed and organized data is returned to customer. The customer's data is not provided to any other party, or used by Petitioner for any other purpose.

The data may be delivered to the customer on various "deliverables," including DVDs, CDs, hard drives, and ASCII Files (i.e., text files), or the data may be "hosted" on Petitioner's servers and accessed by the customer via Petitioner's website. The customer has the ability to choose the deliverable on which the data will be delivered. There is an additional, separately stated charge for each deliverable, with the exception of ASCII Files, the first two of which are provided without additional charge. This charge varies by the type of deliverable and ranges between \$20 for a CD to \$250 for a hard drive. Petitioner indicates that the charge for deliverables is nominal in relation to the overall charge for the service.

Petitioner also offers the following optional services:

1. Foreign language translation.
2. Clustering (or data categorization) – Clustering is the classification of data sets into subsets, so that the data in each subset shares one common trait. This feature allows "like" documents to be viewed in one "folder" for a more conceptual approach.
3. File filtering – File Filtering includes the processing of customer data, so that documents can be filtered by metadata properties (e.g., file type, date, e-mail domain, sender/recipient, doctype, etc.) or by keyword searching.
4. Project management – Project managers work with customers to develop an efficient workflow (including built-in quality control points), define project scope and specifications, and the impact of

- any changes. Project managers provide customers with status and tracking reports throughout the duration of the project.
5. E-discovery consulting – Consultants provide comprehensive advice throughout the course of the litigation.
  6. Training – Project managers coordinate training, assessing client needs, user access, number of sites and reporting requirements. Initial training includes logging in, viewing/database layout, navigation, searching, issue coding, redacting, and printing.

## Analysis

Petitioner's litigation support services are information services, but they are personal and individual in nature, and therefore not subject to New York State and local sales taxes.

As relevant here, Tax Law section 1105(c)(1) imposes tax on the receipts from the sale, except for resale of the service of:

[F]urnishing information by printed, mimeographed or multigraphed matter, or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is or may not be substantially incorporated into reports furnished to other persons, and excluding the services of . . . persons acting in a representative capacity . . . .

We conclude that Petitioner's litigation support service is an information service because it includes analyzing, compiling, and organizing customer information. Petitioner's service does more than merely recast or reformat the customer's information. For example, Petitioner adds to the information by categorizing like documents, enabling documents to be searched by type, date, etc., and by adding unique document identifiers, etc. This analysis adds to "intelligence" contained in the original documents, and therefore constitutes an information service. *See ADP Automotive Claims Services, Inc. v. Tax Appeals Tribunal*, 188 AD2d 245 (3d Dep't 1993). However, we further conclude that Petitioner's service is excluded from the tax on information services because it is personal and individual in nature. Petitioner organizes and analyzes the customer's own documents and does not provide the original documents, or the analysis, compilation, or organization, to any party other than the customer. The fact that the customer, in the context of a litigation discovery process, may provide the original documents to a third party does not change this result, because neither Petitioner nor the customer is providing the information furnished by Petitioner (i.e., added intelligence) to others or incorporating the same into reports furnished to others.

Petitioner's optional services of foreign language translation, project management, e-discovery consulting, and training, as described above, are not services that are subject to sales tax. *See* TSB-A-09(46)S; TSB-A-09(33)S; *KPMG, LLP*, TSB-A-00(7)S. The services of clustering and file filtering may constitute information services to the extent that they add to the intelligence contained in a customer's original documents. However, because these services, like the litigation support services discussed above, are performed on the customer's own documents, and no information or analysis, compilation, or organization is provided to third parties, these services are excluded from tax as personal and individual in nature.

Petitioner also asks whether its "deliverables" (i.e., DVDs, CDs, hard drives, text files and electronic storage) are subject to sales tax. Tax Law section 1105(a) imposes sales tax on "the receipts from every retail sale of tangible personal property." Tangible personal property includes "[c]orporeal personal property

of any nature.” Tax Law §1101(b)(6). Some of the deliverables Petitioner describes (e.g., DVDs, CDs and hard drives) are tangible personal property. Nevertheless, because nontaxable information services are not subject to tax regardless of the form in which the information is provided to customers, tangible personal property that is an integral part of the provision of such services is not separately taxable. Accordingly, because petitioner's deliverables are an integral part of the provision of petitioner's nontaxable information service, we conclude that the charge for the deliverables is not a receipt for tangible personal property.<sup>1</sup> However, Petitioner’s purchases of tangible media that it uses to deliver its service to its customers are subject to State and local sales and use tax.

DATE: May 6, 2010

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Jonathan Pessen  
Director of Advisory Opinions  
Office of Counsel

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.

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<sup>1</sup> The existence of a separate charge for the tangible property by means of which a nontaxable information service is provided does not conclusively render that property taxable, and any implication to the contrary in *Tower Innovative Learning Solutions, Inc.*, TSB-A-06(5)S was unintentional.