

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

TSB-A-11(9)S
Sales Tax
April 7, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S110103A

On December 29 2010, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks when it is required to collect sales tax on the sale of title abstract services, what rate of sales tax must be collected on taxable sales, whether it must remit sales tax when a customer does not pay the bill for taxable services, and when it may claim a sales tax bad debt credit/refund. Effective September 1, 2010, Petitioner is required to collect sales tax on the sale of title abstracts that are delivered to customers in New York. The sales tax rate applicable to a taxable sale is the combined state and local rates in the jurisdiction where the delivery of the abstract is made. Petitioner must remit to the Tax Department the sales tax due on all taxable sales irrespective whether it collects sales tax from the customer; however, Petitioner would be entitled to claim a sales tax bad debt credit or refund once a taxable receipt becomes uncollectible.

Facts

Petitioner sells abstracts of title. The corporation's customers request abstracts for real property located in many counties in New York. On occasion, Petitioner will deliver an abstract to a customer located outside the State. Some customers do not timely pay the amount due for abstracts. Some customers never paid Petitioner for an abstract.

Analysis

Tax Law section 1105(c)(1) imposes sales tax on receipts from the service of furnishing information by printed, mimeographed or multigraphed matter, or by duplicating written or printed matter in any other manner. TSB-M-10(7)S, *Sales and Compensating Use Tax Treatment of Certain Information Services*, provides in part:

Previous correspondence from the Tax Department indicated that sales of abstracts of title were not subject to sales tax. To better reflect controlling judicial case law, the Tax Department has changed this policy. Therefore, beginning on September 1, 2010, the sale of an abstract of title to real property is the sale of a taxable information service. This includes the sale of an abstract of title to either a prospective purchaser of real property or to an attorney representing a prospective purchaser. However, opinions of title offered by an attorney are considered legal services and are not subject to tax. Therefore, the sale of an abstract of title to an attorney for use in conjunction with rendering an opinion of title or providing other legal services is a retail sale subject to sales tax as described herein.

Thus, effective September 1, 2010, Petitioner's charges for title abstracts are receipts from the sale of information services that are subject to sales tax when the abstracts are delivered in New York.

The New York sales tax is a destination tax. 20 NYCRR §525.2(a)(3). The point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incidence and the tax rate. *Id.* The sales tax rate applicable to the sale of an abstract of title in New York is the combined state and local rates in effect in the location where delivery of the abstract occurs.

The New York sales tax is a transaction tax; liability for the tax occurs at the time of the transaction. 20 NYCRR §525.2(a)(2). Generally speaking, the taxed transaction is an act resulting in the receipt of consideration for the transfer of title, or possession, or both to property or rendition of an enumerated service. *Id.* The time or method of payment is immaterial. *Id.* When Petitioner makes a taxable sale, it must report the receipts for transaction on the sales tax return covering the period in which the sale is made, even if payment is not received at the time of sale.

The sales tax is an accrual tax. *Id.* This means Petitioner must remit the tax with its sales tax return that covers the period during which the sale occurred, even if the customer has not yet paid for the service by the time the return is due. 20 NYCRR §533.4 (a)(1).

The facts that Petitioner's office is located in New York, the abstracts are prepared at this office in New York, and the location about which an abstract is requested is either within or without New York are not relevant to whether New York sales tax is imposed on the sale. *See* TSB-A-09(55)S. It is the point of delivery of the abstract that determines the imposition of tax. *See* 20 NYCRR §525.2(a)(3). Services are taxed based upon the location to which they are delivered notwithstanding that the service may have been performed elsewhere. Petitioner's deliveries of abstracts to customers in New York are subject to sales tax regardless of whether the location of the property that is the subject matter of the report is within or without the State. If Petitioner delivers an abstract to a customer outside New York, it does not have to collect sales or use tax from the customer, even if the customer uses the abstract in New York after purchase; however, the customer would be required to remit use tax directly to the State. All sales of enumerated services within the state are presumed subject to tax until the contrary is established. 20 NYCRR § 533.2. Therefore, Petitioner must maintain records sufficient to verify that the abstracts were delivered outside the state and that sales tax was not required to be collected on that basis.

Where a receipt has been ascertained to be uncollectible, either in whole or in part, the vendor of the tangible personal property or services may apply for a refund or credit of the tax paid on such receipt within three years from the date the tax was payable by such person to the Tax Department. 20 NYCRR §534.7(b)(1). The term "uncollectible" means worthless, as used for federal income tax purposes. 20 NYCRR §534.7(a)(1). Legal action to enforce payment when it would probably not result in satisfaction of a judgment upon a showing of underlying facts is not a necessary prerequisite in determining worthlessness. *Id.* Refund claims for bad debts must be filed with Department of Taxation within three years from the date was payable by the applicant to the Department. 20 NYCRR §534.7(d)(2). If Petitioner's bad debt refund claim is timely, it may claim a sales tax bad debt credit on the sales tax return for the period during which the taxable receipt becomes uncollectible.

DATED: April 7, 2011

/S/

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Deputy Commissioner and 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.