

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

TSB-A-15(5)S  
Sales Tax  
March 23, 2015

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S111103B

The Department of Taxation and Finance received a petition for Advisory Opinion from [REDACTED] “Petitioner”. Petitioner asks whether its subscription-based internet services described below are subject to sales and use tax. We conclude that Petitioner’s Healthcare Registry and Rapid Recall services are each taxable as the sale of an information service.

**Facts**

Petitioner is a not-for-profit organization focused on the adoption and implementation of product identification standards in the healthcare industry to improve patient safety and supply chain efficiency. Petitioner offers two services through the use of the internet: the Rapid Recall Exchange (“RRE”) and the Healthcare Registry (“HCR”).

The RRE is a subscription-based electronic service to communicate and manage pertinent information concerning product recalls in an efficient and timely manner between manufacturers, distributors, and regulatory agencies. All subscribers to the service need to obtain their own telecommunications connections to Petitioner’s website. There are two groups of Rapid Recall Exchange (RRE) users: “Recall Initiators & Approvers” (Initiators) and “Recall Recipients” (Recipients). The group of Initiators consists of manufacturers, wholesale distributors and brokers. The group of Recipients consists of retail distributors, wholesale distributors and brokers. Manufacturers in the Initiators group also need to buy a GTIN from Petitioner. A GTIN is a 12-digit product identification number used to uniquely identify trade items (products or services). Each trade item is allocated its own separate GTIN.<sup>1</sup> To send a notification through the RRE, an Initiator will sign in at Petitioner’s website and choose an icon for initiating messages, which triggers a list of the subscribers who have chosen to subscribe to receive notifications about the product associated with the GTIN about which the Initiator wants to send out the notification. The service then sends out the message to all such subscribers by e-mail. The message will be waiting for the recipients when they next sign into Petitioner’s website. Using the RRE service, the recipients are able to send messages back to the Initiator. Both user

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<sup>1</sup> The main function of GTINs is to provide a way to uniquely identify any item so it can be looked up in a database – for example to get its price, record its sale, confirm its delivery or identify its order – at any point during the supply chain and from any place in the world. The first six numbers of a GTIN is a prefix that identifies the particular manufacturer, while the second six digits identify a particular product.

groups are charged a fee for the use of RRE. That fee is scaled and increases based upon the users' reported revenues and the number of authorized users. The Initiators group are charged a slightly higher scaled fee.

Petitioner's charge for a GTIN is based on the volume of products that the subscriber manufacturer has registered with Petitioner. Some customers buy a GTIN without also subscribing to Petitioner's RRE service because the GTIN has uses outside of the RRE service. Those subscribers who will be receiving the recall or other notices (i.e., the distributors and government agencies) do not obtain any GTIN.

Petitioner's HCR service is an on-line database service that is designed to allow healthcare providers and suppliers ("trading partners") to share an integrated set of standards to locate products, including the locations of trading partners. The location data includes items such as a postal address, a phone number, type of business, and purpose for that location. All subscribers must buy a GLN from Petitioner. This GLN is a unique prefix composed of numbers that identifies the trading partner's location(s) in the database. These prefixes are not interchangeable between users. Some purchasers buy GLNs without subscribing to the HCR service because a GLN has uses outside of the HCR.

All subscribers have access to the entire database. Subscribers can download or see every location in the Registry without any additional subscriptions. A subscriber can choose to "subscribe" to a GLN or set of GLNs so that, if any information is changed or updated, that subscriber will be notified.

Petitioner charges a flat fee for the right to access the HCR. It charges a separate flat fee for a GLN.

## **Analysis**

The Tax Law imposes sales and use tax on retail sales of tangible personal property and the sale, except for resale, of certain services. *See* Tax Law § 1105(a), (c). Among the enumerated services subject to tax is the furnishing of 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. Excluded from that tax are advertising services and the furnishing of information that is personal or individual in nature and that is not or may not be substantially incorporated in reports furnished to other persons. *See* Tax Law § 1105(c)(1); *see also* Tax Law § 1105(c)(9). If a common database is used to generate reports or otherwise disseminate information, the sale of the information is subject to sales tax under § 1105(c)(1) despite the fact that the reports, screens or displays of such information may be customized to meet the specific needs of customers. *See Rich Products Corporation v Chu*, 132 A.D. 2d 175 (3<sup>rd</sup> Dep't 1987); *Towne-Oller & Assoc. v State Tax Comm'n*, 120 A.D. 2d 873 (3<sup>rd</sup> Dep't 1986).

RRE is a method by which Initiators can transfer information of interest to Recipients with each group separately paying Petitioner. The charge for posting the information for

viewing by the Recipients is not taxable. *See Sales and Compensating Use Tax Treatment of Certain Information Services*, TSB-M-10(7)S. But the service received by the Recipient group is an information service (collecting, compiling or analyzing information and reporting this information to others) that does not qualify for the exclusion for the furnishing of information that is personal or individual in nature and that is not or may not be substantially incorporated in reports furnished to other persons. *See TSB-A-93 (24)S* (charge to access a computerized information directory held to be a taxable information service).

As for Petitioner's charges for GTINs, assuming GTINs have uses apart from the RRE service and that Petitioner offers them for sale apart from the RRE service, those charges are not subject to tax. *See Penfold v State Tax Commission*, 114 A.D. 2d 696 (3d Dep't 1985) (permissible to separate out and tax differently if service is not an integral part of the transaction and can be reasonably reckoned as a separate service).

The primary function of the HCR service is providing access to a database of address information about trading partners. Such a service is taxable as an information service. *See Rich Products Corporation v Chu, supra*; TSB-M-10(7)S, *supra*. Assuming that GLNs have uses apart from the HCR service and that Petitioner offers them for sale separate from the HCR service, the charge for a GLN is not subject to tax. *See Penfold, supra*.

DATED: March 23, 2015

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.