

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-16(20)S
Sales Tax
May 27, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S101129A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner), [REDACTED]. Petitioner asks whether four services (“Portal,” “Trusted Identity Framework,” “Messaging,” and “Supplier Connection”) it sells are subject to sales tax and, if any of these services are subject to sales tax, and how the sales should be sourced.

We conclude that (i) the Portal and Trusted Identity Framework services are subject to sales tax under Tax Law § 1105(c)(8) as protective services and should be sourced based on the location where the protected data resides and (ii) the Messaging and Supplier Connection services are not subject to sales tax.

Facts

“Communicate” Rubric Services

Petitioner sells two services under the rubric “Communicate”: “Portal” and “Trusted Identity Framework.” The crux of each product is that Petitioner, in essence, acts as a gatekeeper allowing users access to a client’s computer network or other on-line resources. Examples of such resources are computerized medical records and software applications. Both products are accessed via the Internet.

“Portal” is an on-line portal hosted by Petitioner, co-branded with the customer, in which Petitioner delivers a secure platform and workspace that can be personalized by communities of users across multiple organizations. One element of the product is Petitioner’s development and hosting of a web site, which may have the outward appearance of being a web site hosted by the customer. Individuals seeking access to a customer’s on-line resources can gain access only through the portal. The customer designates the individuals granted access and determines what resources a user may access. Authorized users are assigned IDs and passwords. The portal includes a security integration function that verifies that individuals seeking access are authorized to have access. If an individual seeking access is authorized to have access, the individual will be linked to the resources on the customer’s web site for which it is authorized. Once the user is linked to a customer resource, the customer is responsible for managing user access.

Petitioner charges an implementation fee for designing and building the portal site. Petitioner maintains the site at no additional fee for a specified contract period. Free maintenance includes help desk services for users.

After the initial contract period expires, the customer must pay a subscription fee for Petitioner’s continued maintenance and hosting of the portal. This fee covers the following

costs: maintenance of the customer portal code base; maintenance, testing and validation of customer code to support upgrades to the core infrastructure products; testing of all enhancements to ensure continued functionality; and continued help desk service. This fee will vary depending on the number of authorized users.

An optional feature offered under “Portal” is “Federated Login Capabilities,” which allows users to access customer resources using an ID and password issued by Petitioner without needing a separate login ID issued by the customer. Petitioner bills a one-time charge for this feature to cover the costs of setting up coding and security integration.

The other product sold under the “Communicate” rubric is “Trusted Identity Framework.” This product is designed to allow businesses or government entities to share information and applications with employees or third parties, such as suppliers, partners, customers, or the general public. “Trusted Identity Framework” is similar to “Federated Login Capabilities,” except that it is offered without a portal maintained by Petitioner. Instead of the user logging into a portal maintained by Petitioner to gain access to a customer’s resources, the user directly logs on to the customer’s portal page and then is linked to the Petitioner’s network so that Petitioner can verify the user’s ID and password. If the ID and password are confirmed, the user is routed back to the customer’s resources. The service allows the customer to control the content of its own portal pages, while Petitioner maintains ID management, access, passwords resets, etc. for the users.

Petitioner charges a monthly fee for this service, which is based on the number of the customer’s users.

Connect Rubric Services

Petitioner sells two products under the rubric “Connect”: “Messaging” and “Supplier Connection.” In the case of both of these services, Petitioner provides a central data messaging hub that routes business messages or data in various formats between trading partners. Each customer must provide its own Internet connection to Petitioner’s portal on the Web.

In the Messaging service, messages are transmitted between trading partners’ networks via the Internet through Petitioner’s server, which is located outside New York State. Messages can be tracked via communication code, which provides the IP address of the computer that transmits the message.

Each trading partner is charged a one-time user set up fee for professional services performed by Petitioner, which include obtaining the data necessary to set up relationships between the trading partners. Each customer is charged a monthly maintenance fee, which is based on the number of trading partners with whom the customer is linked.

If a trading partner’s application environment is different from other trading partners’ application environments, the message must be translated into a customer specific document format that can be read by the other trading partners’ systems. Petitioner bills a one-time fee for this service, hereafter referred to as a mapping service. This fee is billed on a per-map basis. Petitioner bills an additional mapping fee on an ongoing basis to cover the cost of keeping the

coding current with each trading partner's system and translation requirements. This maintenance fee is based on the number of messages that have to be translated. In addition, each trading partner is charged a monthly fee based on the number of kilocharacters the partner sent or received during a billing period.

A non-optional fee billed by Petitioner for messaging service is a mailbox fee for the costs of setting up the integration channel, which is the mechanism to send and receive messages between trading partners. Petitioner also bills on a monthly basis a mailbox maintenance fee to each trading partner for the service of maintaining the connection between trading partners.

"Supplier Connection" is essentially the same service as "Messaging"; however, instead of using internal software to compose and transmit messages, trading partners utilize web browsers to exchange data with each other. For this service, Petitioner charges a one-time registration fee, a configuration fee, and a periodic per-user fee.

The Connect services are used to send messages between computers; hence, messages are sent to IP addresses. Petitioner claims that it does not know the geographic location of its customers' computers that send and receive messages.

Analysis

Communicate Rubric Services

Petitioner's portal and trusted identity framework services under the "Communicate" rubric perform a gatekeeper function for customers. These services ensure that only authorized users gain access to the customer's on-line resources. Thus, the crux of these services is the security function of verifying that persons seeking access to on-line resources are authorized to have that access. Persons seeking access to the customer's resources may be located both inside and outside of New York State.

These electronic gatekeeper services qualify as protective services for purposes of Tax Law § 1105(c)(8) because they prevent unauthorized persons from gaining access to its customers' confidential data. *Cf.* TSB-A-10(14)S. Protective services are provided in New York (i.e., "sourced" to New York) if the property being protected is located in New York. *See* N-90-20; TSB-A-10(14)S, *supra*. Thus, to the extent that the data being protected is located in New York (e.g., resides on servers in New York), then Petitioner is providing a protective service in New York. If the protected data is located both inside New York and outside the State, Petitioner should collect tax only with respect to the data located in New York. In making the determination of where its protective services are being provided, Petitioner may rely on a letter from the customer indicating the taxing jurisdiction or jurisdictions where the protected data is located, absent a showing of fraud or knowledge on the part of Petitioner that the contents of the letter are untrue. Such a letter must be signed by the customer (or the appropriate employee or officer thereof) and contain a statement acknowledging that it is being furnished for the purpose of allowing Petitioner to determine the appropriate amount of New York State and local sales and use taxes due. Petitioner must keep the letters furnished by its customers as part of its sales tax records, and be able to associate each letter with related sales, for at least three years after the date of the last sale to which the letter relates. The customer is required to update the letter if

there is a change in where the services are being provided. In order to continue to rely on the letter, Petitioner should regularly review with its customer the information contained in the letter to ensure that the information is still accurate, no less frequently than every three years.

The sales tax is a tax on the customer to be collected by the vendor. *See* Tax Law § 1132(a)(1). Following the above procedure will satisfy the vendor's burden of showing it collected the proper amount of sales tax. However, to the extent that, on audit, the Department finds that the vendor, using the above procedure, did not collect the proper amount of tax, the customer would be liable for any additional tax due.

Connect Rubric Services

The "Messaging" and "Supplier Connection" services under the Connect Rubric provide a central data messaging hub that routes business messages or data between business partner members of the service, who must provide their own telecommunication connections to the hub. These services are nontaxable bridging services. *See* TSB-A-15(28)S. Thus, Petitioner's fees for setting up the relationship between trading partners and maintaining those relationships, as well as its mailbox set-up and maintenance fees, are not taxable. In addition, Petitioner's charges for its mapping services are not taxable, as they constitute data processing charges.

DATED: May 27, 2016

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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.