

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-97(2)S  
Sales Tax

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S961105C

On November 5, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Marvin Rosenthal, 88 Sunnyside Boulevard, Plainview, New York 11803. Petitioner, Marvin Rosenthal, submitted additional information pertaining to the Petition on November 14, 1996.

The issue raised by Petitioner is whether receipts from the sales of certain services represented by investigative reports are subject to sales tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion. Petitioner also submitted samples of investigative reports that have been redacted for confidentiality.

Petitioner's client (hereafter "Taxpayer") sells loss consulting services resulting in investigative reports to foreign and domestic insurance companies, self-insurers, third party administrators, attorneys, and other individuals and corporations. Taxpayer retains licensed private investigators, court and public record search firms, security experts, handwriting experts, forensic experts and other search firms on a regular basis (hereafter subcontractors). The subcontractors' work products (i.e., their reports) are incorporated into Taxpayer's reports which are provided to the clients. These subcontractors are located in New York State and throughout the world. The subcontractors are under Taxpayer's management and report directly to Taxpayer, but they are not employees of Taxpayer. They bill Taxpayer for their fees together with any applicable tax. Taxpayer's investigative reports and stationery advertise "Agents In Principal Cities Throughout The World."

The investigative reports are individualized, investigative reports concerning specific incidents, accidents or litigation. They may be used in specific cases being litigated in the federal, state or local courts and in various administrative hearings. The reports are not sold or disseminated to the public because they are of no value to anyone other than the persons requesting them.

Taxpayer is not licensed as a private investigator under Article 7 of the General Business Law or as an insurance adjuster under Article 21 of the Insurance Law.

Applicable Law

Section 1105(c)(8) of the Tax Law imposes sales tax upon the receipts from every sale, except for resale, of the following services:

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 71(1) of the General Business Law provides:

"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; crime or wrongs done or threatened against the government of the United States of America or any state or territory of the United States of America; 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 the affiliation, connection or relation of any person, firm or corporation with any union, organization, society or association, or with any official, member or representative thereof; or with reference to any person or persons seeking employment in the place of any person or persons who have quit work by reason of any strike; 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 the business of persons licensed by the industrial commissioner under the provisions of section twenty-four-a or subdivision three-b of section fifty of the workmen's compensation law or representing employers or groups of employers insured under the workmen's compensation law in the state insurance fund, nor 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.

Opinion

Taxpayer, through its subcontractors acting on its behalf, conducts activities that fall within the meaning and intent of protective and detective services under Section 1105(c)(8) of the Tax Law. For example, as evidenced by the sample investigative reports submitted, Taxpayer's agents conduct surveillance activities as well as detailed background investigations.

In Compass Adjusters and Investigators Inc. v Commissioner of Taxation and Finance (197 AD2d 38) the Court indicated that "among the detective and protective services covered by Tax Law §1105(c)(8) are those provided by detective agencies, but the Tax Law contains no definition of detective services or detective agency." In this regard, the Court found it appropriate to equate the terms "detective services" and "detective agencies" to the "broad definition of private investigator" found in Section 71 of Article 7 of the General Business Law, supra. The Court concluded "that the term protective and detective services contained in Tax Law §1105(c)(8) does not include those services which cannot be performed without the license required by Insurance Law §2102(a)(1)" (the service of investigating and adjusting claims, arising under certain insurance contracts). The Court stated:

When they [the plaintiffs] are performing activities that require a license pursuant to the provisions of General Business Law article 7, plaintiffs are acting as private investigators for which no independent adjuster license is required, and they concede that the fees they charge for those detective services are subject to the sales tax under Tax Law §1105(c)(8). When plaintiffs are performing activities that require a license pursuant to the provisions of Insurance Law article 21, they are acting as independent adjusters, for which no private investigator's license is required, and the fees charged for those services are not subject to the sales tax.

Accordingly, receipts from the sales of Taxpayer's services culminating in the investigative reports are subject to sales tax under Section 1105(c)(8) of the Tax Law unless Taxpayer is performing services that either require a license pursuant to the provisions of Article 21 of the Insurance Law or are otherwise expressly excluded from Section 71(1) of the General Business Law (e.g., representing self-insurers before the Workers' Compensation Board). See, Steven J. Boyko, Adv Op Commr T&F, June 29, 1995, TSB-A-95(24)S; Robert M. Bridges, Adv Op Commr T&F, June 29, 1995, TSB-A-95(25)S. Whether Taxpayer performs services that require a license pursuant to Article 21 of the Insurance Law cannot be determined in an Advisory Opinion rendered by the Commissioner of Taxation and Finance. Moreover, in accordance with Section 1132 of the Tax Law, the burden of proving that any of Taxpayer's receipts from the sales of these reports are not subject to sales tax under Section 1105(c)(8) of the Tax Law is upon Taxpayer and its clients.

It is noted that Taxpayer may purchase the reports of its subcontractors, such as the reports of licensed private investigators, without payment of sales

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tax if the subcontractors' reports are purchased exclusively for resale as part of Taxpayer's taxable investigative reports.

DATED: January 24, 1997

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.