

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

TSB-A-97(14)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960628A

On June 28, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Resume Verification, Inc., P.O. Box 712, Watertown, New York 13601.

The issue raised by Petitioner, Resume Verification, Inc., is whether receipts from the sales of its resume verification services are subject to State and local sales taxes.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Prospective employers use the services of Petitioner to verify the accuracy of the information contained in resumes that are supplied by applicants for employment. Petitioner is not involved in any employment decisions that are made by prospective employers.

An applicant for employment must execute an "Authorization and Release," which was provided by Petitioner. Petitioner indicated that this document provides information on all of its business activities. The document authorizes:

- the applicant's former educational institutions to release to Petitioner all of the applicant's high school, college and other educational records pertaining to the applicant's attendance, course work and other school activities (collectively referred to as "Educational Records");
- the applicant's present and former employers to disclose to Petitioner any and all information about the applicant's present and former employment history (collectively, "Employment History");
- any federal, state or local government agency to disclose to Petitioner any information held by any such agency regarding the applicant and capable of dissemination including, without limitation, drivers license or motor vehicle information, criminal record information, citizenship or immigration information, military record information and social security information (collectively, "Government Records");
- any investigative or credit agency or bureau to disclose to Petitioner any and all information about the applicant's financial and credit record (collectively, "Credit Record");
- any reference source to respond to any and all inquiries made of them by Petitioner (collectively, "Reference Inquiries"); and

- Petitioner to supply the applicant's Educational Records, Employment History, Government Records, Credit Record, Reference Inquiries and any Workers' Compensation claims and information, in whole or in part, to the prospective employer.

The Authorization and Release also releases the previously mentioned entities from any and all liabilities that may arise as a result of their providing or disclosing to Petitioner any of the authorized information. In addition, it releases Petitioner, its directors, officers, employees and agents from any and all liabilities that may arise as a result of Petitioner providing such information to the prospective employer and from any and all liabilities that may arise as a result of any decision which the prospective employer may make regarding the employment of the applicant.

In accordance with the Fair Credit Reporting Act (General Business Law, art. 25), the applicant is advised in the Authorization and Release that part of Petitioner's service for verifying the accuracy of the information supplied by the applicant to the prospective employer may include an investigative report whereby information is obtained through personal interviews with third parties such as business associates, financial sources or friends. The inquiry includes information as to the character, general reputation, personal characteristics, and mode of living of the applicant. The applicant is also advised of its right to make a written request within a reasonable period of time for a complete disclosure of the information concerning the nature and scope of the investigative report.

Most of Petitioner's business has involved Department of Motor Vehicle records and criminal reports. To assure that each prospective employer receives accurate, up-to-date information, Petitioner does not resell any information obtained for one prospective employer to other prospective employers if the same person applies to more than one employer for a job.

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.

Opinion

The Department of Taxation and Finance has held that services of the nature provided by Petitioner fall within the meaning and intent of protective and detective services, the receipts from the sale of which are subject to State and local sales taxes (Tax Law, §§1105(c)(8); 1212-A(f)(1); former Tax Law, §1212-A(h)(2)(i)(B)). See, Fidelifacts/Metropolitan New York, Adv Op Commr T&F, December 4, 1986, TSB-A-86(50)S.

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.

Section 71(1) of such law provides in part:

"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

In the present case, the services performed by Petitioner fall within the scope of this definition. Moreover, Petitioner's services are not expressly excluded from this definition by any of the provisions of Article 7 of the

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General Business Law. Accordingly, receipts from the sales of Petitioner's resume verification services are subject to State and local sales taxes under Section 1105(c)(8) of the Tax Law.

DATED: March 27, 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.