

Sales and Compensating Use Tax Treatment of Certain Information Services

This memorandum is intended to clarify the tax treatment of certain information services under sections 1105(c)(1) and 1105(c)(9) of the Tax Law. It is not intended to serve as an exhaustive explanation of sections 1105(c)(1) and 1105(c)(9). Its purpose is to provide general guidance regarding a wide array of services that are taxable under sections 1105(c)(1) or 1105(c)(9), unless eligible for some other exclusion or exemption in the Tax Law. In some cases, the determination of whether or not a service is a taxable information service requires a fact-intensive examination of the nature of the service being sold and what is being paid for by the purchaser.

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. Services subject to tax under this section include the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons. Certain information services are excluded from tax. Those services include 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. Also excluded from sales tax are ". . . the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news. . . ." Additionally, section 1105(c)(1) provides that meteorological services are excluded from tax. Further, the sales tax does not apply to receipts from the sale of information that is purchased for resale.

Section 1105(c)(9)(i) of the Tax Law imposes sales tax on the sale of an information service that is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature, such as information services provided through 800 or 900 numbers, mass announcement services, or interactive information network services. However, the tax imposed by section 1105(c)(9) does not apply to an information service unless it would otherwise be subject to taxation under section 1105(c)(1) of the Tax Law if it were furnished by printed, mimeographed, or multigraphed matter, or by duplicating written or printed matter in any other manner. Section 1105(c)(9)(ii) of the Tax Law imposes an additional tax at the rate of 5% on the sale of an information service subject to tax under section 1105(c)(9)(i) that is received by the customer exclusively in an aural (i.e., audible) manner.

Tax Department policy regarding taxable information services

A wide variety of businesses are engaged in furnishing taxable information services. As a general rule, furnishing information created or generated from a common database, or information that is widely accessible, is a taxable information service. The sale of a report that uses or relies on statistical models or historical data is also generally considered to be a taxable

information service, as is the service of gathering information from a variety of sources and recasting that information into a report. The resulting reports are not considered personal or individual in nature because they contain information that can be incorporated into reports furnished to other persons. A *sale* includes the sale of a single report and also includes an ongoing payment for access to information, such as a subscription.

Whether a service qualifies as an information service depends on its primary function. The fact that one element of a service is an information service does not mean that the service as a whole is taxable as an information service. The Tax Department will determine a service's primary function based on an examination of the nature of the service being sold and what is being paid for by the purchaser. How the buyer subsequently uses the information purchased is not relevant to this inquiry. If a customer's chief purpose in paying for a service is to receive information from that service, whether it is the price of a stock, the chain of ownership of real property, or contact information for a person meeting certain qualifications, the service as a whole qualifies as an information service. This result holds true even if the customer receives other benefits as part of the service.

A service is taxable as an information service if its primary function is one of the following:

- advertising rate reports for a given medium or market;
- archive services (examples include sales of access to historical information, documents and manuscripts, archived articles or journals);
- college selection services and financial assistance information services (examples include college and scholarship search services);
- consumer product reports, such as product evaluations;
- credit monitoring services;
- directory and mailing list services (examples include the sale of customer lists, lists of postal mailing addresses, lists of e-mail addresses, lists of bad checks, telephone directories, business directories, collections of fact, price lists and almanacs, collections or compilations of proprietary drug trials, and compilations of legal case results);
- employment history reports;
- employment placement reports and employment registries (examples include employment databases, babysitting registries, and model registries), but not charges merely to post information;
- genealogical research services;
- information furnished by credit reporting bureaus;
- Internet-based data and Web search services (examples include Internet entertainment information sites, Internet sports information sites, Internet newsletters, and Internet search portals and search Web sites);
- investment reports and services (examples include stock market reports and forecasts, mutual fund rating services, and stock quotation services);

- matching or networking services (examples include online dating services, physician matching services, and contractor locator services), but not charges merely to post information;
- news clipping services (examples include services providing individual news or magazine articles on a given subject);
- newsletter subscriptions (however, newspapers and periodicals are not taxable);
- online telephone or address directory services;
- patent search services (unless provided by an attorney in the practice of law);
- pedigree record services (for example, an online directory);
- people or parts locator services (examples include online classmate locator services or online vintage car parts locator services);
- public records furnished (electronically or in paper format) by a private entity, such as a document retrieval service (examples include real property deeds, motor vehicle accident or violation reports, etc.; however, public records sold by a governmental entity, such as a county clerk, are not subject to tax; for more information, see *Public documents sold by private entities* below);
- real property information databases (but if the database provides only access to public documents as such see *Public documents sold by private entities* below);
- reporting services that compile news stories or issues related to a certain topic;
- reports or databases of information on movies, books, or other media;
- sports scouting reports;
- sports statistics or athletic performance reports (examples include horse racing handicapping or tip sheets, and fantasy baseball or fantasy football reports); and
- survey results (examples include marketing and public opinion research reports).

The absence of a service from this list does not mean that it is not subject to tax under section 1105(c)(1) or 1105(c)(9).

Voluntary Disclosure and Compliance program

Taxpayers, including sellers of information services, are eligible for the Tax Department's Voluntary Disclosure and Compliance program. The goal of the program is to encourage taxpayers to voluntarily disclose and correct delinquent tax liabilities and avoid penalties. For more information on this program, go to the department's Web site at www.nystax.gov or call 1 (866) 763-7115.

Clarification of existing Tax Department interpretation

Public documents sold by private entities

The Tax Department's policy with respect to the sale of public documents by private entities was articulated in *State Farm Mutual Automobile Insurance Co.*, Adv Op Comm T&F, December 28, 2004, TSB-A-04(29)S. In that opinion, it was concluded that the sale of public documents constitutes the sale of a taxable information service, and that the exclusion from tax

for information that is personal or individual in nature does not apply to information filed with a governmental agency as a public record to which there is unlimited public access. This statutory interpretation follows controlling judicial case law.

Despite the issuance of this Advisory Opinion in 2004, some taxpayers may have continued to reasonably rely on correspondence from the Tax Department predating this Advisory Opinion. That correspondence, which gave advice to the contrary, also indicated that the Tax Department would provide notification if the advice in the letter was reversed. Therefore, for sales tax quarterly periods beginning before **September 1, 2010**, the Tax Department will not assess any sales tax due that was not collected, or any related penalty and interest, for sales of public documents made during those periods. Sellers of these taxable information services should now be aware that they are required to collect sales tax on these sales. Therefore, any seller making such sales who is not already registered for sales tax purposes must register and must collect and remit sales tax for any sales made on or after **September 1, 2010**. Moreover, any tax on such sales that was collected and remitted by a vendor before September 1, 2010, was properly collected and remitted, and no refunds of such tax will be made.

Changes to existing Tax Department interpretations

The following two sections describe prospective changes to the Tax Department's interpretation of section 1105(c)(1) of the Tax Law. The changes better reflect controlling judicial case law and administrative decisions, as well as achieve a more consistent interpretation of the statutory language regarding taxation of information services. The Tax Department's new policy relating to the taxability of sales of abstracts of title and risk management analysis reports as information services is described below.

Abstracts of title

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.

Treating the sale of an abstract of title as the sale of a taxable information service is a change to the Tax Department's previous policy on sales of abstracts of title. Any statements issued by the Tax Department regarding its previous policy with respect to abstracts of title are revoked and can no longer be relied upon.

Risk management analysis reports

Previous advice from the Tax Department indicated that sales of the service of providing risk management analysis reports were not subject to sales tax. To better reflect controlling judicial case law and administrative decisions, the Tax Department has changed this policy. Therefore, beginning on **September 1, 2010**, the sale of a service whose primary function is to provide risk management analysis reports is the sale of a taxable information service. A service that relies on statistical models and historical data to generate a report analyzing and forecasting the risk associated with various aspects of a client's business is an example of the type of risk management analysis report that is a taxable information service. (Compare *AK Productions, LLC*, Adv Op Comm T&F, September 10, 2008, TSB-A-08(41)S, with *Matter of DZ Bank*, Tax Appeals Tribunal, May 11, 2009, for additional information.) Areas of a business that could be the subject of a risk management analysis include: (i) market share; (ii) investment portfolio; (iii) credit; (iv) computer networks; (v) employee turnover; and (vi) security. Although the data used by a company preparing these reports is applied to the client's personal information, the resulting report is not considered personal or individual in nature because it generally contains information obtained from a common database or information that is widely accessible, and such information can be incorporated into reports furnished to other persons.

Since both market and credit management analysis reports were previously found to be excluded from tax in *The RiskMetrics Group LLC*, Adv Op Comm T&F, January 21, 2000, TSB-A-00(2)S, that opinion is revoked and can no longer be relied upon.

Sales tax registration

If you sell taxable information services and you are not currently registered for sales tax purposes, you must apply for a *Certificate of Authority* from the Tax Department. This certificate authorizes you to collect the required sales taxes on taxable information services, and to issue or accept sales tax exemption documents. If you make taxable sales before receiving a *Certificate of Authority*, you may be subject to substantial penalties.

You can register for sales tax purposes by using the *New York State Online Permit Assistance and Licensing* Web site at www.nys-permits.org, or you can fill out Form DTF-17, *Application to Register for a Sales Tax Certificate of Authority*, and send it to the address listed on that form. You must apply for a *Certificate of Authority* at least 20 days prior to making taxable sales.

Once you are registered for sales tax purposes, you must collect tax, file returns, remit tax, and keep records. For more information about the requirements and responsibilities of a person required to collect sales tax, see Publication 750, *A Guide to Sales Tax in New York State*, and Publication 900, *Important Information for Business Owners*, which are available on the department's Web site at www.nystax.gov.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.