

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-03(21)S
Sales Tax
May 8, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020510A

On May 10, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from GeoAccess, Inc., 8345 Lenexa Drive, Suite 300, Lenexa, Kansas, 66214. Petitioner, GeoAccess, Inc., provided additional information relating to the petition on September 20, 2002.

The issue raised by Petitioner is whether subscription fees, which include associated marketing fees, additional employee surcharges and annual practitioner fees, allowing access by health plans and hospitals to its database on health care practitioners are subject to sales and use tax as charges for an information service.

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

Petitioner is a Kansas company that is engaged in data storage and processing services. Petitioner plans to build a new data warehouse that will house physicians' credentials related to information that physicians are required by health care plans (HCPs) and hospitals to provide as a basis for allowing the physicians to participate in the HCP or to have privileges at the hospital. The data will include, among other things, demographic, licensing board certification, and litigation information on each physician. Physicians are now required by each HCP or hospital to complete an extensive questionnaire in hard copy which forms the basis for receiving approval by the HCP or hospital to participate in the HCP or to have privileges at the hospital. Each questionnaire is forwarded by the HCP or hospital to a credential verifying organization and, once the information provided has been verified, is returned to the submitting HCP or hospital. The HCP or hospital can then determine whether the physician will be allowed to participate in the HCP or to have privileges at the hospital. Since each physician may participate in several HCPs in addition to having privileges at one or more hospitals, the same credential questionnaire may need to be verified several times at the request of numerous HCPs and hospitals.

Petitioner offers a service of collecting the physician information once and subsequently making the information available to HCPs and hospitals by subscription. This permits the physician to complete a single questionnaire on line rather than preparing a separate questionnaire for each HCP and hospital.

The information provided by the physicians is stored on Petitioner's servers outside of New York State. At regular intervals, Petitioner will create an extract of the data for each of the physicians participating in each health plan. The information is then placed on Petitioner's servers, and Petitioner's customers (HCPs and hospitals), pay a subscription fee to obtain a password and access the information via a secure Internet connection. Once the information is accessed, it is downloaded in electronic form and verified by Petitioner's customers or by an independent third-party verifying organization engaged by Petitioner's customers. Petitioner does not currently provide the verification service.

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Petitioner breaks down its charges to its customers into an initial set-up fee and annual subscription fee. The set-up and subscription fees cover the cost of enrolling and maintaining Petitioner's customers in the system. The subscription fee is designed to help cover the costs of product development, and to eventually lead to a profit. Each fee will be separately billed.

Petitioner will charge a separately stated marketing fee that will be remitted monthly with the other fees. The marketing fee paid to Petitioner by its customers will be passed through to a trade group that will use the money to promote further participation in Petitioner's system. Petitioner will also charge a separately stated fee to the HCP or hospital for each physician participating in the system which is remitted monthly with the other fees.

Each of Petitioner's customers will have an employee of Petitioner (located in Kansas) assigned as the "primary plan administrator," along with one back-up administrator. Petitioner's employees provide a "help desk" function in this "primary plan administrator" capacity. The customer can, for an additional monthly fee, request additional employees to be dedicated to such customer.

Applicable Law and Regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(2) Purchaser. A person who purchases property or to whom are rendered services, the receipts from which are taxable under this article. . . .

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article . . . valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery . . . regardless of whether such charges are separately stated. . . .

Section 1105(c) of the Tax Law provides, in part, for the imposition of tax upon:

The receipts from every sale, except for resale, of the following services:

(1) 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, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons, and excluding 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, and excluding meteorological services.

* * *

(9) (i) The furnishing or provision of an entertainment service or of an information service (but not an information service subject to tax under paragraph one of this subdivision), which 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 entertainment or information services provided through 800 or 900 numbers or mass announcement services or interactive information network services. Provided, however, that in no event (i) shall the furnishing or provision of an information service be taxed under this paragraph unless it would otherwise be subject to taxation under paragraph one of this subdivision if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner. . . .

Section 526.5 of the Sales and Use Tax Regulations provides, in part:

(a) Definition. The word receipt means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise. The following subdivisions of this section discuss elements of a receipt.

* * *

(e) Expenses. All expenses, including telephone and telegraph and other service charges, incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts.

Opinion

Petitioner collects and compiles credential information on physicians for use by its customers who are health care plans (HCPs) and hospitals. Petitioner charges its customers an initial set-up fee and subscription fee to cover the costs of enrolling and maintaining a participant in the system, a fee for each physician who is part of the plan, and a marketing fee which is passed through to a trade group to promote further participation in the system. The “primary plan administrator” (help

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desk employee assigned to a customer) is included in these fees. Should Petitioner's customer require additional help desk personnel, an additional amount is charged to the customer.

Petitioner collects and compiles information into a database as described in Section 1105(c)(1) of the Tax Law. Petitioner charges its customers various fees to access its database. By accessing this database, Petitioner's customers obtain information regarding the credentials of participating physicians. This service would be subject to tax under Section 1105(c)(1) of the Tax Law if it were furnished in a manner provided by that section. See Allstate Ins. Co. v. State Tax Commission, 115 A.D.2d 831. Information services delivered by means of "telephony or telegraphy or telephone or telegraph service" are subject to tax under Section 1105(c)(9) of the Tax Law. See Technical Services Bureau Memorandum entitled Taxability of Entertainment and Information Services Provided by Means of Telephony or Telegraphy, October 10, 1990, TSB-M-90(10)S. Therefore, the service provided by Petitioner is subject to New York State and local sales or use taxes pursuant to Section 1105(c)(1) or 1105(c)(9) of the Tax Law. Furthermore, this service does not come within the exclusion from tax under Sections 1105(c)(1) and 1105(c)(9) for information which is "personal or individual in nature." Since any of Petitioner's customers has access to any data in Petitioner's database, the information downloaded by any one customer is not personal or individual in nature and may be substantially incorporated into reports furnished to other customers by Petitioner. See Towne-Oller and Assoc. v. State Tax Commission, 120 AD2d 873, Twin Coast Newspapers, Inc., v. State Tax Commission, 101 AD 2d 977. In fact, Petitioner's stated purpose in allowing a physician to file a single set of credential information which will then be made available to multiple customers (HCPs and hospitals) demonstrates that the same information is expected to be provided in reports to multiple purchasers.

In order to avail themselves of the information on physicians' credentials on Petitioner's Web site, customers must pay the initial set-up and annual subscription fees, marketing fee, fees for each participating physician, and the fee for additional "plan administrators," if requested. These fees represent expenses incurred by Petitioner in making a sale of information services as described above. See Section 1101(b)(3) of the Tax Law and Section 526.5(e) of the Sales and Use Tax Regulations. Accordingly, the total charges for access to information on Petitioner's Web site are subject to sales or compensating use tax.

DATED: May 8, 2003

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