

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

TSB-A-90 (12)S
Sales Tax
March 21, 1990

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891031A

On October 31, 1989 a Petition for Advisory Opinion was received from Joseph A. Matocha, 21 Aviation Road, Albany, New York 12205.

The issue raised by the Petitioner, Joseph A. Matocha, is whether charges paid for "home inspection services" are subject to sales and use tax.

A person or business is hired by a potential purchaser of a residential building to inspect the building and contents being sold and to report on any deficiencies noted. The inspector provides his client, the prospective purchaser, with a written report of deficiencies in the building. No repair services are performed by the inspector. The written report is provided only to the client. The purchaser of the inspection service generally relies on the inspection report to decide if further price adjustments are necessary before purchase of the residence or if repair of the deficiencies is necessary.

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

(1) The furnishing of information by printed, mimeographed or multi-graphed 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.... (Emphasis added).

Regulation Section 527.3(b)(2) further explains Section 1105(c)(1) of the Tax Law as follows:

The sales tax does not apply to the receipts from the sale of information which is personal or individual in nature and which is not or may not be substantially incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed such information....

Example 2: Automobile insurance damage appraisals performed for insurance companies are individual reports, the fees for which are not subject to sales tax....

Furthermore, forage testing reports (David J. Converse, Advisory Op St Tax Comm, August 4, 1981, TSB-A-81(12)S); concrete sample testing reports (Fortunato Sons Inc., Advisory Op St Tax Comm, July 28, 1986, TSB-A-86(30)S); and power mower testing reports (Garden Way

Incorporated, Advisory Op Comm T & F, July 25, 1989, TSB-A-89(22)S) have all been determined to meet the exclusionary requirements of Section 1105(c)(1) of the Tax Law.

Since the report prepared by the inspection service represents a collection of data derived from an inspection and analysis of the premises being purchased by the client, the sale of such report in written form constitutes the rendering of an information service within the meaning and intent of Section 1105(c)(1) of the Tax Law.

Because the report pertains only to the particular premises being purchased by the particular client, the report is considered to be uniquely personal or individual in nature, thus satisfying the first condition required for exclusion from taxation pursuant to Section 1105(c)(1) of the Tax Law.

The second condition for exclusion mandates that the information may not be substantially incorporated in reports furnished to other persons. The report furnished to the client meets this condition in that the data and analysis contained in the report is furnished only to the client, is not furnished to other persons and has value for a very limited period of time.

Therefore, as the report furnished to the client meets the criteria required under the exclusionary clause of Section 1105(c)(1) of the Tax Law, as further illustrated by the section of the Regulations and the opinions cited above, such report constitutes a non-taxable information service.

Accordingly, the amount of the charge for the home inspection report is considered to be a receipt from the sale of a non-taxable information service and is not subject to state or local sales tax.

It is further noted that as long as the purchaser of the home inspection service is not the owner of the real property which is the subject of the home inspection report, the charge paid by the purchaser for the report will not be subject to sales tax pursuant to Section 1105(c)(5) of the Tax Law as a charge for maintaining, servicing or repairing real property, property or land.

DATED: March 21, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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