

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner requests guidance on whether it can accept Direct Payment Permits from its customers where the dispatched location of its security guards is known at the time of sale. We conclude that Petitioner must refuse to accept Direct Payment Permits for any sale where it is not impossible at the time of acquisition of services to determine the taxable nature of those services.

Facts

Petitioner operates a security guard service company. Currently, Petitioner accepts Direct Payment Permits issued by the Department from its customers at the time of sale for all sales. At the time of its sales, Petitioner has knowledge of the location to which a security guard will be dispatched. Given the knowledge of the location to which the security guard will be dispatched and at which services will be performed, Petitioner knows at the time of sale whether its services are taxable protective services pursuant to Tax Law § 1105(c)(8). Petitioner seeks guidance as to whether a Direct Payment Permit can be accepted in all sales or, if not, when it must refuse to accept the permits and collect tax on its services pursuant to Tax Law § 1105(c)(8).

Analysis

Tax Law § 1132(c)(2) provides that the Commissioner may authorize a purchaser, who “acquires tangible personal property or services *under circumstances which make it impossible at the time of acquisition* to determine the manner in which the tangible personal property or services will be used, to pay the tax directly to the Commissioner and waive the collection of the tax by the vendor” (emphasis added). This authorization is documented by way of a Direct Payment Permit. The statute provides further that a vendor shall not be required to collect tax from a purchaser who furnishes a valid Direct Payment Permit in proper form.

Sales and Use Tax Regulation 532.5 explains that a Direct Payment Permit is a notice to a vendor that the holder is authorized to pay directly to the Department any tax due on purchases any tax due on purchases. The regulation states that “[t]he vendor’s responsibility for the

