

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 asks whether it must collect and remit sales tax on amounts paid by insurance companies in the course of providing automobile insurance claims administration services.¹

Facts

Petitioner is a Kansas limited liability company with a principal place of business in Florida. Petitioner does not maintain an office in New York State. Petitioner does not have employees, independent contractors, agents, or any other representatives in New York State. Petitioner does not sell, or resell, any tangible personal property. Petitioner's sole activity is to provide claims processing services for insurance companies. Petitioner is not in the business of repairing automobiles; rather, Petitioner manages repair claims as agent of insurance companies for a separately negotiated fee. Petitioner is not registered as a sales tax vendor in New York State, and does not collect sales tax on monies paid to automobile repair shops on behalf of insurance companies for repairs of covered damages to an insured's vehicle.

Petitioner focuses only on the administration of claims for the repairs of automobile glass and other physical damage to automobiles. Insurance companies all have claims departments; however, some insurance companies outsource their claims handling to Petitioner. Petitioner offers automated claims services 24 hours a day, 7 days a week. Petitioner neither purchases tangible personal property for repairs nor performs any repair services. Rather, all repair services are performed by repair garages chosen by an insured. At no time does Petitioner have any control over repair activities. Petitioner's only connection with the repair garages is that Petitioner facilitates payment by an insurance company for the repairs to an insured's vehicle.

In some instances, Petitioner is associated with a network of repair garages in locations across the country, including New York State. Those repair garages enter a participation agreement with Petitioner (Participation Agreement). Petitioner does not solicit any repair garage to be part of the network or advertise on any website that would allow "click through" access to Petitioner's website. Rather, any repair garage that wants to be part of the network must register on Petitioner's website and electronically accept the terms and conditions of Petitioner's Industry Services Registry (Registry). Once registered and accepted through the Registry, the repair garage is eligible to be reimbursed by the insurance company pursuant to the Participation Agreement for repairs performed on an insured's automobile.

¹ Petitioner also asks whether it is a vendor (*i.e.*, has nexus with New York), which would require it to register for sales tax purposes and collect and remit State and local sales tax. However, nexus questions are not addressed in Advisory Opinions and, therefore, we provide no opinion on this issue.

In other instances, the insurance companies have their own affiliated network of repair garages. For example, Petitioner's largest contract is with a national insurance company (National Insurance Company). The National Insurance Company has each repair garage enter its own participation agreement (Insurance Company Participation Agreement). Because Petitioner is the outsourced claims department for the National Insurance Company, the Insurance Company Participation Agreement identifies Petitioner as the program administrator responsible for providing administrative services, such as a call center and invoice processing.

Petitioner administers claims using both Electronic Funds Transfer (EFT) technology and Electronic Data Interchange (EDI) technology. Approximately 90% of Petitioner's transactions are done entirely via EFT and EDI technology and no paper invoice is involved. If a repair garage is unaffiliated (i.e., the insured exercises his or her option to have repairs made by an out-of-network repair garage), the repair garage issues a paper invoice to the insurance company and Petitioner converts the invoice to an electronic format for processing via EFT and EDI technology.

To process a claim, Petitioner first confirms coverage of the damage and any applicable deductible. The insured then chooses a repair garage and gets the automobile repaired. An invoice is issued by the repair garage to the insurance company. Petitioner relies on the repair garages to collect the proper sales tax. Once the work is performed, the repair garage sends Petitioner an invoice for the parts, services, and any applicable sales tax. Petitioner forwards the invoice to the insurance company for confirmation of the coverage for the repair. The insurance company reviews the coverage confirmation and then remits payment for the invoice to the Petitioner. Petitioner then forwards the payment to the repair garage. Only after Petitioner receives the payment of the repair garage invoice from the insurance company does Petitioner issue payment to the repair garage. All payments are made electronically, and the amount paid to the Petitioner is the same amount Petitioner pays to the repair garage. Petitioner is paid a separately negotiated administrative fee by the insurer for its services.

Analysis

Sales tax is imposed on retail sales of tangible personal property, and on certain enumerated services. Petitioner provides the service of automobile insurance claim processing to certain insurance companies. Petitioner works with automobile repair garages selected by insured individuals to receive and process automobile damage claims, and processes payments to the garages for covered repairs under an insured individual's policy for such repairs. Petitioner asserts that it acts as agent for the insurance company in this process and does not purchase tangible personal property or services. Rather, it processes payments for covered automobile repairs under the terms of an insured's policy with an insurer. Petitioner receives payment for covered repairs from an insurer and remits the payment to the repair garage in the exact amount it received from the insurer. Petitioner is paid a separately negotiated administrative fee by the insurer for its services.

We conclude that Petitioner's services are not among the services subject to sales tax. An insurer's payment of a property damage claim to an insured or its designee under a contract of insurance is not subject to sales tax. It follows, therefore, that Petitioner's processing and payment of such claims as agent of an insurer is not subject to sales tax.

Tax Law § 1105(c)(3) imposes sales tax on the services of installing, maintaining, servicing or repairing tangible personal property not held for sale in the regular course of business. Automobile repairs come within the ambit of this section. However, we conclude that Petitioner is not selling or purchasing automobile repairs. Petitioner acts as an agent of an insurance company for the purpose of administering automobile damage claims. Petitioner does not engage in repairs or purchase repairs on behalf of an insured. Repairs are performed by an automobile repair garage selected by the insured. Petitioner processes the payment for covered repairs as agent of the insurer. Accordingly, Petitioner is not performing a repair service and is not required to collect or remit sales tax on those services. Rather, it is the person performing such repairs (in this case, the repair garage) that must collect and remit sales tax, as applicable.

Finally, Petitioner separately negotiates a fee with insurers for the service of processing automobile damage claims. Because this service is not among the services on which sales tax is imposed, the Petitioner's fee is not subject to sales tax.

DATED: November 17, 2020

/S/

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.