

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

TitleTRACK

Abstracts of title are now taxable

The New York State Department of Taxation and Finance recently clarified the areas of the information services spectrum that are now taxable.

The changes will have a significant effect on the abstract of title and title insurance industry.

On July 19, the department issued memorandum TSB-M-10(7)S, Sales and Compensating Use Tax Treatment of Certain Information Services, to provide guidance into some of the services that will be taxed as a result of the new interpretation of Tax Law section 1105(c)(1).

“[A]s a general rule, furnishing information created or generated from a common database, or information that is widely accessible, is a taxable information service,” the memorandum states.

Several information services are taxable under the interpretation, including public records furnished (in electronic or paper form) by a private entity, such as a document retrieval service (including real property deeds, motor vehicle accident or violation reports).

Public records sold by a governmental entity, such as a county clerk, are not subject to the tax. Sales tax on such services must be collected beginning Sept. 1.

The Tax Department had determined previously that abstracts of title were not subject to taxation; however, the memorandum specifically spells out the new policy on the taxation of abstracts: “beginning on September 1, 2010, the sale of an abstract of title to real property is the sale of 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.”

Underwriters and their agents now must collect and remit sales tax, accompanied by the required sales tax return when required.

Why did the Tax Department change its stance? Readers involved with real estate transactions in other counties and other states no doubt are familiar with the incredible increase in user fees charged by municipal treasurers, assessors, real property divisions and county clerk's offices. Often the fee is for what was, until recently, free. Some counties downstate charge up to \$75 for property tax information and many others charge exorbitant fees to access real property records online. Just this past week, another fee increase for the purchase of an index number was approved. Quite simply, it's another way for struggling areas to make up for budget shortfalls.

Concerns about the implementation of the tax collection remain, due to the variety of local tax rates in New York. In addition, many companies have offices throughout the state as well as many out-of-state customers. WebTitle Agency and our out-of-state closing/settlement division, Cascade Settlement Agency, derive nearly all of revenue through performing title search services outside of New York — much of it for companies not based in New York. This ultimately will raise more questions about the taxation and its collection for all of us.

The New York State Land Title Association is communicating with the Department of Taxation and Finance to obtain guidance on the requirements on other services provided by abstract and title companies and exactly how to determine the proper rates.

Larry Sweet is senior title examiner/abstractor for WebTitle Agency, an issuing agent for First American Title Insurance Co. of New York, Fidelity National Title Insurance and Old Republic National Title Insurance Co.; 69 Cascade Drive, Rochester, N.Y. 14614; (585) 454-4770; www.webtitle.us.



By **LARRY SWEET**

Daily Record
Columnist