

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>GLOBALSPEC, INC.</b>	:	DETERMINATION
	:	DTA NO. 823435
for Revision of a Determination or for Refund of	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period September 1, 2005	:	
through August 31, 2008.	:	

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Petitioner, GlobalSpec, Inc., filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 2005 through August 31, 2008.

A hearing was held before Dennis M. Galliher, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York on February 10, 2011 at 10:30 A.M., with all briefs to be submitted by December 23, 2011, which date commenced the six-month period for issuance of this determination (Tax Law § 2010[3]). Petitioner appeared by McNamee, Lochner, Titus & Williams, PC (G. Kimball Williams, Esq., of counsel). The Division of Taxation appeared by Mark F. Volk, Esq. (Anita K. Luckina, Esq., of counsel).

***ISSUES***

I. Whether petitioner has established that its purchases of newsletter content consisting of links to articles together with brief introductory comments pertaining to such articles, which content was formatted and published by petitioner as an electronic newsletter, did not constitute an information service subject to tax pursuant to Tax Law § 1105(c)(1), (9)(i).

II. Whether, if petitioner's service constitutes an information service, the same must be excluded from being subject to tax because the information provided is personal and individual in nature and is not or may not be substantially incorporated in reports furnished to others.

***FINDINGS OF FACT***

1. Petitioner, GlobalSpec, Inc. (GlobalSpec), is a Delaware corporation, authorized to do business in New York State. GlobalSpec's principal office is located in Troy, New York.

2. For many years, petitioner has maintained a narrow-scope, specialized vertical search engine, providing content geared to the needs of engineering, scientific, technical and industrial professionals. Petitioner's search engine is a "niche" search engine, and may be distinguished from other more general search engines (e.g., Google) based on the level of content screening. Petitioner's search engine provides search responses more specifically attuned to the engineering and scientific needs at the higher technical levels of those who utilize petitioner's search engine.

3. In responding to a Division of Taxation sales tax audit questionnaire, GlobalSpec described itself as follows:

GlobalSpec, Inc. is an internet-based business that links buyers and sellers in the electrical, electronic, mechanical, chemical and optical products markets. The Company is a provider of business-to-business advertising services. Specifically, the Company derives the majority of its revenue from selling product display and banner advertising to Companies (suppliers) that wish to advertise their products and services on GlobalSpec's internet site, on-line catalog, and electronic newsletters. Registered members of GlobalSpec's internet site may use the Company's search engine (found on GlobalSpec's internet site) free of charge.

GlobalSpec further describes itself as:

the leading specialized vertical search, information services and e-publishing company serving the engineering, manufacturing and related scientific and technical market segments. The company provides its buy-side users with domain-expert search engines, a broad range of proprietary and aggregated Web-based content and over 60+ product and industry e-newsletters that

help engineers and related professionals perform their key job tasks with the highest levels of accuracy and productivity. GlobalSpec provides its sell-side client base of companies seeking to reach the worldwide engineering audience with highly filtered sales leads, product promotion and brand advertising platforms and a wide range of e-media advertising and marketing services.

4. GlobalSpec offers, among other services for marketers, “a variety of online advertising programs, including highly targeted product promotion, sales lead generating and brand advertising programs on GlobalSpec’s e-newsletters . . . .” Petitioner states that “[s]ince its inception, GlobalSpec has strived to provide innovative Web-based and online information services that align with and support the job tasks of the engineering and related professional communities.”

5. Petitioner appeals to its advertising clients by noting that “[u]nlike a general search engine, the people searching on GlobalSpec are specifically looking for products, services and suppliers in the industrial market segments.” Petitioner provides “targeted exposure,” stating that “GlobalSpec connects buyers and sellers within the industrial marketplace, providing targeted exposure, increased brand visibility and traffic to your Web site” via searchable catalogs, company directories, e-Newsletters and banners, and pay-per-click.

6. Until 2004, GlobalSpec published, as an adjunct to its search engine, a single, general engineering newsletter.<sup>1</sup> Thereafter, and as the result of survey feedback from its newsletter subscribers, GlobalSpec determined that these newsletter subscribers were interested in receiving content providing more focused information pertinent to their specific everyday work experiences, as opposed to the single broad-based newsletter that GlobalSpec had been

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<sup>1</sup> GlobalSpec’s newsletters are published only in electronic format (i.e., e-newsletters), but will be referred to herein simply as newsletters.

publishing. Consequently, GlobalSpec began to publish newsletters on a variety of topics aimed at more specific segments of its subscribers' fields of employment.

7. At present, petitioner publishes some 62 newsletters. Petitioner's newsletters are designed to appeal to the engineering, technical and industrial communities, and focus on various processes and product categories therein. In general terms, petitioner's newsletters are aimed at providing awareness of and access to content that will help the people in the engineering, scientific and industrial fields perform their jobs better, build their products faster and more efficiently, and bring them to market in a timely fashion.

8. The newsletters are delivered by e-mail to users of petitioner's website who have subscribed to receive them. The 62 newsletters are not sent out as a "blast" e-mail to all of GlobalSpec's subscribers. Instead, three or four newsletters are typically sent out to individual subscribers based on the specific newsletters those individuals signed up to receive. Petitioner's newsletters are also available on its website, including a searchable archive of its prior newsletters. Petitioner does not charge a subscription fee to receive the newsletters. Rather, similar to traditional print publications, petitioner derives revenue from manufacturers and suppliers who purchase advertising space from petitioner in those newsletters relevant to their target markets and products.

9. Registering (or subscribing) to receive petitioner's newsletters occurs in two ways. In some instances a person who visits petitioner's website for research would see a "pop-up" advertisement or invitation to subscribe, and would respond by giving certain demographic information so as to become a registered user. In turn, that person would receive more specialized content in their fields of endeavor. Alternatively, people can simply subscribe directly to receive some (or theoretically all) of petitioner's newsletters. Typically, subscribers

are engineers that work in the design and manufacturing fields and desire to receive those newsletters of relevance to their particular area of work or interest.

10. Petitioner obtains the content presented in its newsletters by engaging the services of freelance content providers referred to as “editors.” Petitioner advertises for highly trained and experienced engineers, scientists and other technical professionals possessing notable credentials, including advanced educational degrees and work experience in their chosen fields. In addition to their education, technical training and work experience in their given area, the persons engaged by GlobalSpec also have writing experience. Nearly all of those engaged by GlobalSpec started their careers as working engineers, and then segued into journalism in the technical fields in which they were educated and had worked. Petitioner seeks to engage individuals who, by virtue of their training and experience, know the particular manufacturing or engineering sector and marketplace to which a given newsletter will pertain, the nomenclature of that marketplace, and the “key players” (individuals and companies) therein.

11. Petitioner’s editors use their multidisciplinary knowledge and industry experience to find and highlight content in the fields covered by petitioner’s newsletters. Petitioner subdivides its editors into three tiers consisting of a group editor, associate editors and freelance editors. Petitioner utilizes the three-tiered hierarchy to track and check the content and quality of the editors’ newsletter submissions. This hierarchy and process may be described as follows:

- a) The top of the tier is the group editor. The group editor chooses and oversees the associate and freelance editors, reviews and requests revisions to newsletter submissions, if needed, and ultimately approves the content submitted to petitioner for publication as a newsletter. In addition to the foregoing responsibilities concerning freelance and associate editors, the group editor also produces one or more newsletters in his own area of expertise. The group editor is an independent contractor and not an employee of GlobalSpec, and is compensated by petitioner pursuant to the

negotiated terms of a Group Editor Agreement with petitioner. The Group Editor Agreement includes a non-compete clause.

b) Associate editors are independent contractors and not employees of GlobalSpec. They oversee, review and request revisions, if necessary, to newsletter content submitted by the freelance editors. In addition, associate editors produce one or more newsletters in their own areas of expertise. Associate editors are paid a set amount of \$525.00 per newsletter they produce on their own, and are paid \$60.00 per hour for the service of editing the newsletters submitted by the freelance editors, and for ancillary work such as rating the ongoing performance of freelance editors.

c) Freelance editors produce newsletters in their areas of expertise, and are paid a flat fee of \$500.00 per newsletter produced. Freelance editors, like the group and associate editors, are independent contractors and are not petitioner's employees. Freelance editors do not have the oversight, review and revise responsibilities of the associate editors or of the group editor. The majority of petitioner's newsletters are produced by the freelance editors, and petitioner contracts with approximately 32 freelance editors, each of whom produces one or two of the 62 newsletters published by petitioner.

12. Each newsletter editor engaged by petitioner decides what content the subscribers would want to be apprised of and finds that content from a variety of sources, including the World Wide Web, various technical print magazines, the websites of key companies in the given sector and trade show news information. While petitioner's subscribers know how and where to search for information, GlobalSpec can save its subscribers time by "culling through" the vast amount of information available and vetting the same on the basis of relevance and reliability. Thus, petitioner aims to take the broad scope of possibly relevant material and narrow the same to fit the specific scope of a given newsletter. The editor's introduction or head note to an article is designed to tell the reader of a given newsletter why he or she should care to link to and access the information contained in the highlighted article. The full articles described in the newsletters are reachable by link, enabling the subscribers to access and read the full underlying referenced articles.

13. Petitioner's e-Newsletter Editorial Guidelines, pursuant to which its editors produce the newsletters, state that "GlobalSpec's e-Newsletter editorial vision is to provide unbiased, educational, and newsworthy information to the engineering, technical, and industrial professions. The content should be developed first and foremost to serve the needs and demands of the e-Newsletter readership base and not to appear self-serving to GlobalSpec." Petitioner states the "ultimate goal" is to "aggregate the most newsworthy content - and become the newsletter that readers can go to for a summary of leading publication news stories," with "GlobalSpec's e-newsletters [serving] as a portal to get readers to sites where original content resides."

14. Petitioner's newsletters address topics within the particular engineering, scientific or technical area to which each pertains. However, neither the newsletters nor the editors answer specific questions posed by individual subscribers. Rather, each newsletter is intended to appeal to a target engineering, technical, scientific or industrial sector, and focus on various product categories and processes therein. The newsletters are typically published on a monthly basis, although some are published more frequently depending on the topic and the then-current evolution of the topic area.

15. Petitioner's witnesses noted that in prior years, the various industries and sectors had related trade or technical print magazines containing articles on emerging or changing technologies. In fact, many of GlobalSpec's editors wrote for such publications. However, with the advent of internet technology, much of this information now resides in electronic format rather than in traditional print format, and GlobalSpec's newsletters are designed to alert the working professional to such electronically available information.

16. Petitioner's description of its newsletters, as set forth in its job postings seeking to hire newsletter editors, states:

GlobalSpec's E-Newsletters provide engineering, technical, and industrial related content to the professional engineering, technical and industrial communities. Our E-Newsletter properties include over 55 business-to-business e-publications. These e-newsletters keep readers informed of product areas of interest, new technologies, the latest industry news and trends, and more, and use internet technology and creativity to help GlobalSpec clients reach their targeted audience of buyers on a monthly basis.

The *Editor's* primary responsibility is to write headlines and brief introductory/engaging content for a steady flow of high-quality news stories aggregated from the worldwide web. Editors will conduct research/search activity via the GlobalSpec Web site/Search Engine and worldwide web to find stories on news, trends, companies, profiles, new technology, product introductions, careers, and diversions that will interest the engineering, scientific and technical community of professionals.

17. The group editor follows petitioner's "e-Newsletter Freelance Editor Hiring and Termination Process" (Process) in selecting associate and freelance editors, who work pursuant to a verbal agreement with no specific length or term of engagement. The Process pursuant to which petitioner's associate and freelance editors are engaged (and terminated) includes a confidentiality agreement addressing nondisclosure of certain proprietary information, but does not otherwise prevent these editors from performing similar services for others, and many of the editors engaged by petitioner also write for other enterprises.

18. Petitioner's editors select the content to be included in the newsletter for which they are responsible, and then write a brief three to six line paragraph addressing the content contained in the underlying article in a manner aimed to encourage the reader to link to the original content (full article) on the web to learn more. Petitioner provides detailed editorial guidelines that the editors must follow in producing and editing the e-newsletters to be published,



including a list of publications from which articles should not be taken due to unreliability, among other things.

19. All of GlobalSpec's newsletters have a standard format, and the content for petitioner's newsletters is provided to petitioner by its editors in this format. Under this standard format, each newsletter includes an "Industry Trends" section, four "Technology" categories, a "Careers and Commentary" section, "Diversions," and "Discussion/Share Your Thoughts." Each is described as follows:

- a) "Industry Trends," as its title suggests, presents an article which is not product-oriented but rather is broader in scope and pertains to advances or potential directions in a given field.
- b) "Technology" addresses four categories within the particular newsletter's industry or sector, and presents new, emerging or changing technologies or products in those industries or sector categories. Often the name of the company that provides the product or technology described in the editor's paragraph (and in the underlying article) appears below the headline for the editor's paragraph.
- c) "Careers and Commentary" covers career opportunities in the area covered by the newsletter.
- d) "Diversions" is a lighter and more amusing section still focused, however, on the industry or sector of the given newsletter.
- e) "Discussion/Share Your Thoughts" introduces a topic, selected by the particular newsletter editor, with the hope of piquing the interest of the newsletter readers so as to start a commentary discussion, linked by blog, among the readers and pertaining to the chosen topic.

The newsletters include images, pictures or graphics to accompany the newsletter content. This material is selected by the editors and is aimed at capturing the readers' attention. There is also, as noted, advertising that appears in the newsletters.

20. Petitioner's newsletters are not set up to receive and specifically respond to individual technical questions from petitioner's subscribing readership, and this is not part of the role

performed for petitioner by its editors. Petitioner's editors do not author original technical solution-based work, in general or in response to any specific individual request for a solution to a particular problem, and generally do not have any direct contact with the newsletter subscribers. While some newsletter topics may overlap to some degree, the specific content provided by the editors, with rare exceptions, stands alone. The editor's paragraphs pertaining to the Technology categories are intended to influence the reader to go to the underlying full article, via the link, and read that article. Thus, the editor's paragraphs would be aimed at succinctly explaining why the reader would want to turn to the underlying article and read the same. As set forth by petitioner, the aim is not to simply reprint technical articles, or even so much to summarize such articles, but rather to convince the reader that the article is relevant and will be helpful to the working professional in performing job functions.

21. In September 2008, the Division of Taxation (Division) commenced a sales tax field audit of petitioner. As a result of its audit, the Division issued to petitioner a Notice of Determination (L-03265044-7), dated October 13, 2009, assessing sales tax due in the amount of \$68,468.62, plus interest, on purchases of newsletter content in the amount of \$855,858.00 for the period September 1, 2005 through August 31, 2008.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 1105(c) imposes tax upon the receipts from every sale, except for resale, of nine specifically enumerated services. As is relevant to this matter, Tax Law § 1105(c)(1) imposes tax upon the service of:

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. . . .

In 1990, Tax Law § 1105(c) was expanded by the addition of paragraph nine so as to impose tax upon the receipts from every sale, except for resale, of an information service that is provided via telephony or telegraphy (Tax Law § 1105[c][9][i], as added by L 1990, ch 190, eff September 1, 1990). Section 1105(c)(9)(i) provides 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.”

B. Regulations of the Commissioner of Taxation and Finance, at 20 NYCRR 527.3, in relevant part identify taxable information services to include “credit reports, tax or stock market advisory and analysis reports and product and marketing surveys.” (20 NYCRR 527.3[a][3].) Examples of taxable information services include a weekly newsletter showing the range of commodity prices, a monthly bound volume of current advertising rates, lists of prospective customers’ telephone numbers, and a computer service company’s print-out of cases and statutes containing the word “assessment” as requested by customers (20 NYCRR 527.3[a], examples 1-4). Examples of nontaxable information services include a private detective agency’s report to its client, an auto insurance damages appraisal report, and a computer services company’s withholding tax payroll report to subscribers (20 NYCRR 527.3[b], examples 1-3).

C. In contrast to Tax Law § 1105(a), which imposes sales tax on all retail sales of tangible personal property, except as otherwise provided, Tax Law § 1105(c) imposes tax only on certain specifically enumerated services (*see Matter of Rochester Gas and Electric Corp.*, Tax Appeals Tribunal, January 4, 1991). Accordingly, whether a service is taxable as one of these specifically

enumerated services is properly construed pursuant to the rule applicable when determining whether a transaction is subject to taxation at all (*see Matter of Grace v. New York State Tax Commn.*, 37 NY2d 193, 371 NYS2d 715 [1975], *lv denied* 37 NY2d 708, 375 NYS2d 1027 [1975]); that is, most strongly against the government and in favor of the citizen (*see Matter of Building Contractors Association v. Tully*, 87 AD2d 909, 449 NYS2d 547 [1982]). This rule of construction stands in contrast to the rule with respect to exemptions from tax, i.e., strictly and narrowly against the taxpayer (*see Matter of International Bar Assn. v. Tax Appeals Tribunal*, 210 AD2d 819, 620 NYS2d 582 [1994], *lv denied* 85 NY2d 806, 627 NYS2d 323 [1995]). However, even with such a construction, proof of entitlement to the exclusion is petitioner's burden and it must show that the service it provides is not one of those set out in Tax Law § 1105(c).

D. The “furnishing of information” is such an enumerated taxable service under the law (Tax Law § 1105[c][1],[9]). However, there is a distinction between a taxable information service and the furnishing of a nontaxable service where information is merely a component of that service. In *Matter of SSOV '81 Ltd.* (Tax Appeals Tribunal, January 19, 1995), the Tribunal explained that the term “information service”:

has been interpreted to mean “the sale of the service of furnishing information by a business whose function it is to collect and disseminate information which is taxable under Tax Law § 1105(c)(1) and not the mere sale of information” . . . . In order to determine a service's taxability, the analysis employed by the New York courts and the Tax Appeals Tribunal focuses on the service in its entirety, as opposed to reviewing the service by components or by the means in which the service is effectuated. (Citations omitted.)

In *Matter of SSOV' 81 Ltd.*, the Tribunal focused on the “primary function” of the service, which was to enable members of a dating referral service to meet others. In concluding that

such primary function was not one of the enumerated taxable services set forth in Tax Law § 1105(c), the Tribunal recognized that the proper focus should be on the primary function itself and not upon whether the service might, as an incident thereof, involve the provision of information, stating that, “[t]o neglect the primary function of petitioner’s business in order to dissect the service it provides into what appears to be taxable events stretches the application of Article 28 far beyond that contemplated by the Legislature.”

Under the foregoing rubric, to be an information service the taxpayer’s primary function and true aim must be the business of furnishing information. As the Tribunal has stated, “the mere fact [that] information is [being] transferred will not create a taxable event” (*Id.*; see *Matter of Principal Connections, LTD.*, Tax Appeals Tribunal, February 12, 2004).

E. The primary function and true aim of petitioner’s newsletters is to provide timely, current, reliable and presumably relevant and useful information to those who register or subscribe to receive petitioner’s newsletters. Petitioner effects this function by providing, at regular intervals, information about the latest technical and scientific trends and developments in the engineering, manufacturing and industrial fields, including information about products and processes in these particular fields and about those who provide and sell the same. The editors, from whom petitioner purchases its newsletter content, locate, retrieve, review, analyze and present information of likely interest to a particular group or segment of potential users of such information. This function and process clearly fall within the ambit of Tax Law § 1105(c)(1) and its language of “collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons. . . .” GlobalSpec pays the appropriately trained and experienced people to find and set forth information that is, in their view, relevant. Of necessity, this requires a sophisticated knowledge of the particular field and an ability to convey that

knowledge in writing. The newsletters are thus the “reports” that set forth the information culled, reviewed and analyzed, and determined by petitioner’s editors to be useful to the target audience or segment served by each newsletter. This process, at the same time, undoubtedly serves to enhance the exposure of petitioner’s advertisers to potential purchasers of the products described in the newsletters. While petitioner’s editors’ introductory or highlight paragraphs are written in their own words, petitioner’s primary purpose is not to provide those few lines or summary but to compile and provide access to the underlying presumably relevant articles. The summary or highlight paragraphs are not the overriding function or goal of petitioner’s business, but rather represent simply the strategy (or sub-strategy) petitioner employs to compel its newsletter readers to link to the articles and thus accomplish its primary purpose (*see* Findings of Fact 12 and 20). This conclusion is entirely consistent with petitioner’s own self-description and with its stated vision for its newsletters (*see* Findings of Fact 3, 4, 5, 13 and 16), and fully supports the view that petitioner is providing an information service to its newsletter readers. In sum, the primary purpose and true aim of petitioner’s newsletter service is to furnish information to a group of readers, and this function is not merely incidental to some other service.

F. The facts of this matter further support the conclusion that petitioner’s newsletter service does not escape taxation via Tax Law § 1105(c)(1) as “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. . . .” The fact that the group or segment to which information is furnished is a smaller group than the general public and, by virtue of having several newsletters directed to various distinct segments or groups smaller than the entire field of engineers or scientists, does not convert petitioner’s service into a personal or individual information service. Petitioner’s service still entails providing information to a group or segment

of potential users. The fact that each newsletter's informational content is made available in a convenient, helpful and efficient manner to a particular audience does not make the same personal or individual in nature so as to escape taxation. Nor is petitioner's service something akin to a consulting service. That is, petitioner's subscribers do not request a particular piece of information nor is the information presented in response to a particular problem discrete to a subscribing newsletter reader. In simplest terms, petitioner pays its editors to locate, analyze, choose, digest and present information to targeted groups of readers likely to be interested in the information presented and in turn to link to the underlying full source of that information. Hence, petitioner's information service is not personal or individual in nature and thus is not removed from the realm of a taxable information service upon that basis.

G. The petition of GlobalSpec, Inc., is hereby denied and the Notice of Determination dated October 13, 2009 is sustained..

DATED: Albany, New York  
May 10, 2012

/s/ Dennis M. Galliher  
ADMINISTRATIVE LAW JUDGE