STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petitions :

of :

ALLIEDBARTON SECURITY SERVICES LLC :

for Revision of Determinations or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period June 1, 2006 through February 29, 2012. :

In the Matter of the Petition :

of :

WILLIAM TORZOLINI :

for Revision of Determinations or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period March 1, 2009 through February 29, 2012. :

DECISION
DTA NOS. 825169, 825690, 825691, 825692 AND 825693

In the Matter of the Petitions :

of :

DAVID I. BUCKMAN AND WILLIAM C. WHITMORE :

for Revision of Determinations or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period March 1, 2010 through February 29, 2012. :

Petitioners AlliedBarton Security Services LLC, William Torzolini, David I. Buckman, and William C. Whitmore filed exceptions to the determination of the Administrative Law Judge issued on December 18, 2014.[1] Petitioners appeared by WTAS LLC[2] (Raymond J. Freda, Esq., Kenneth T. Zemsky, Esq., and Tina Tsao, Esq., of counsel). The Division of Taxation appeared by Amanda Hiller, Esq. (Anita K. Luckina, Esq., of counsel).

Petitioners filed a brief in support of their exception. The Division of Taxation filed a brief in opposition. Petitioners filed a reply brief. Oral argument, at petitioner's request, was heard in New York, New York on August 13, 2015, which date began the six-month period for the issuance of this decision.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether petitioner's provision of reception services was properly considered by the Division of Taxation as "protective and detective services" and therefore constituted an enumerated service subject to sales tax under Tax Law § 1105 (c) (8).

II. Whether the Division of Taxation properly disallowed petitioner's reliance on certain exemption certificates provided by its customers as purported agents of exempt entities.

FINDINGS OF FACT

We have find the facts as determined by the Administrative Law Judge, except for findings of fact 1, 4, 5, 9, 10, and 12 through 15, which have been modified to more accurately reflect the

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[1] Petitioners Buckman, Torzolini and Whitmore do not contest their responsible officer status for their respective periods and their liability in this case is contingent upon that of petitioner AlliedBarton Security Services LLC. As a result, references to petitioner in this decision shall solely mean AlliedBarton unless otherwise stated.

[2] WTAS is now known as Andersen Tax LLC.

record. The Administrative Law Judge's findings of fact and the modified findings of fact are set forth below.

1. Petitioner AlliedBarton Security Services LLC at all relevant times was a business primarily involved in providing security services to various clients, such as financial institutions. Petitioner is headquartered in Conshohocken, Pennsylvania, and began doing business in New York in May 2006. It currently operates in 47 states. In a press release from 2008, petitioner marketed itself as "the industry's premier provider of highly trained security personnel."

2. Petitioner William Torzolini was concededly a responsible officer of petitioner and a person required to collect tax within the meaning of Tax Law § 1131 (1) during the period March 1, 2009 through February 29, 2012. Petitioners David I. Buckman and William C. Whitmore, likewise, were admittedly responsible officers of petitioner during the period March 1, 2010 through February 29, 2012.

3. Petitioner provided varying levels of security officers, ranging from roving to stationary personnel, to various clients. These security officers' role was to serve as a deterrent to potential criminal activity and provide their clients with a safe and productive workplace. They required special training and, to act in the capacity of security guard, a license under New York's Security Guard Licensing Law.[3] In order to better perform their responsibilities, the security officers were provided with cell phones, handcuffs and, in the case of certain high-level guards, firearms. Typically, for these positions, petitioner recruited individuals interested in law enforcement, including criminal justice majors, former police officers and military personnel, and subjected

[3] Comprised of Articles 7 and 7-A of the General Business Law and 19 NYCRR Parts 170 through 174.

them to a thorough background check. This type of personnel accounted for approximately 95% of petitioner's revenue.

4. Petitioner also provided its clients with reception services.[4] These employees typically were seated at a reception desk in a lobby, and their duties included greeting, screening and processing persons requesting access to the site, checking identification, and preparing and issuing visitor passes, and, when necessary, informing visitors that they were not expected and therefore, could not enter the building. The security guards had the responsibility for dealing with someone who, after being informed that they could not enter the building, refused to leave. Also unlike the security guards, the receptionists in New York did not require state licensing and were not provided with handcuffs or weapons of any kind. Reception services constituted approximately 5% of petitioner's revenue.

5. Petitioner recruited individuals with hotel, airport, or concierge/receptionist backgrounds for reception positions, and introduced into the record one of its electronic postings for soliciting potential receptionists. The duties or responsibilities for the receptionist listed in the posting were the same as those recited in finding of fact 4. Petitioner's posting for receptionists was listed on the website "www.greatsecurityjob.com."

6. On occasion, a licensed security guard employed by petitioner performed the duties of a receptionist. Conversely, because he or she lacked the requisite New York State license, petitioner's receptionists never performed the duties of a security guard.

7. Petitioner generally had administrative account managers at client sites to oversee the day-to-day operations of its services. These managers had knowledge of whether a receptionist

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[4] Throughout the hearing and in its briefs, petitioner interchangeably identified this type of service as both reception and concierge services. Therefore, for purposes of this decision, they will be referred to collectively as "reception" or "receptionist" services.

was on duty or if a security guard was performing that task. These daily operations were recorded on reports that were provided to petitioner's billing department.

8. Petitioner's security guards, receptionists, and supervisors wore uniforms, designed by petitioner, while on duty. A photo of six sample uniforms was placed in the record. The majority were police-like uniforms comprised of dark slacks and white shirts, replete with badges, which were worn by basic security guards and supervisors. The purpose of this style was to present a formidable, deterring appearance. The sample uniform worn by a receptionist consisted of a blue blazer, white shirt, maroon tie, and grey slacks. They wore no badge, but displayed petitioner's label, with its company name, on the blazer's breast. These uniforms were intended to portray a welcoming, friendly look. Petitioner allowed its clients to choose which uniforms would be appropriate for their facility, although petitioner had input into the selection process.

9. In the event of a disturbance or confrontation involving a receptionist and a visitor at one of petitioner's job sites, the receptionist was instructed to contact the lobby security officer. The receptionists themselves were not permitted to physically interact with a potential threat and were to stand aside. Mr. Richard Moulton, petitioner's vice president for operations, testified that there had never been an incident where a receptionist prevented an individual or security threat from entering a building.

10. In New York City, petitioner did not have any clients who were provided with reception services at locations staffed with security guards from a competitor. However, such arrangements did exist in New Jersey. Conversely, petitioner had clients that solely hired its security guards and supervisors. In that case, reception services were generally handled by another entity.

11. Three of petitioner's clients during the periods at issue were financial institutions, Duestche Bank and Credit Suisse, and an advertising agency, Ogilvy and Mather. At one point during this time, petitioner lost its reception services engagement with Duestche Bank to a competitor, Swiss Post, a firm that supplied solely reception services. Petitioner, however, did retain the remaining security services with that client.

12. On March 30, 2009, the Division of Taxation (Division) sent a letter to petitioner scheduling an appointment to commence a sales and use tax field audit of its business for the period June 1, 2006 through February 28, 2009. The Division's letter requested that all of petitioner's books and records pertaining to its sales and use tax liability for the audit period be available for review. Among the records specifically requested were the general ledger, cash receipts journal, federal income tax returns, purchase invoices, sales invoices, fixed asset purchase invoices, cash disbursements journal, bank statements, canceled checks and deposit slips for all accounts, and exemption documents. In August 2009, the Division's auditor traveled to petitioner's headquarters in Conshohocken to review the available records. Given the amount of sales tax periods to be examined, petitioner and the Division agreed to a test period audit for sales. The auditor testified that after the audit, petitioner's records were found to be 99% accurate.

13. Certain invoices provided by petitioner to the Division separately listed reception services from other services. On some of these invoices, petitioner did not charge sales tax for the reception services, while on others, such tax was requested for nearly identical entries. Mr. Richard Moulton, petitioner's vice president for operations, explained that occasionally reception services were provided by a licensed security guard and thus, on those occasions such services were considered taxable by petitioner.

14. Reception and security service revenues were booked by petitioner under one account on its general ledger. That account was entitled "security services." Mr. Richard Weiss, petitioner's vice president and chief accounting officer, explained that while differentiating reception and security service revenues was important for tax purposes, all revenues from operations were booked together for general financial purposes.

15. The Division's auditor did not observe petitioner's receptionists in the performance of their duties, nor was any site where receptionists were employed checked.

16. In addition, in the course of the audit, the auditor reviewed exemption documentation, including exempt sales invoices. During that review, the auditor discovered several properly substantiated exempt sales. He also found claimed exempt sales to two clients - Colliers ABR (Colliers),[5] a real estate management company, and FirstService Williams LLC (FirstService)[6] - that raised questions. Neither Colliers nor FirstService was an exempt entity itself. Instead, petitioner asserted that Colliers and FirstService represented that they were acting as agents of governmental entities when they purchased services. Both provided certain forms to petitioner in support of their claims and these forms were provided to the Division.

17. According to petitioner, Colliers represented itself to be an agent of the Metropolitan Transit Authority (MTA) on a form dated November 6, 2006. The form was numbered AC 946 and entitled "TAX EXEMPTION CERTIFICATE." Form AC 946 is a Department of Taxation and Finance form designed for use by employees of exempt governmental entities to exempt date specific transactions, such as a hotel stay or car rental. In this case, it listed petitioner as the firm furnishing services and MTA as the purchaser. In addition, it provided what Mr. Weiss assumed

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[5] Colliers changed its name at some point to Cassidy Turley.

[6] FirstService was formerly known as Williams USA Realty Services or GVA Williams Real Estate.

to be MTA's tax identification number, and listed "security" and "November 6, 2006" as the nature and dates of the transaction for which it was provided. This document was executed by an unidentified individual as the employee of the exempt entity with the title "Director of Real Estate."[7] Finally, in the lower corner of the document was the handwritten entry "MTA (2 Broadway Trust), c/o Colliers ABR, In as Agent." The author and date of this entry was unidentified.

18. The Division was also provided with a property management agreement between MTA and Colliers dated August 1, 2006 and effective for the period October 1, 2006 to September 30, 2010 (MTA Agreement). The MTA Agreement stated that, when describing the nature of the relationship between Colliers and MTA, "[Colliers] will be acting only as an independent contractor, and nothing in this Agreement, expressed or implied, shall be construed as creating . . . an employment relationship or that of principal and agent . . . ." Meanwhile, Appendix E to the MTA Agreement, entitled "Colliers' Competitive Solicitation Process," provided that "Colliers shall use, for MTA's benefit, to the fullest extent permitted by law, MTA's exemption from State and local taxes and most Federal taxes."

19. Petitioner also placed into evidence a one-page contract or purchase order for services dated October 6, 2007 between it, as vendor, and Colliers, as customer. This document called for billing to "MTA c/o Colliers a/a/f."[8] It also stated that "[the MTA], as a New York State Public Authority, is exempt from paying New York sales tax. A tax exempt certificate will be

[7] In its brief below, petitioner identified this individual as "Roco Krsulic." That identification is not present in the evidence in the record.

[8] It is undisputed that "a/a/f" stood for "as agent for."

provided." Several attachments were referenced and incorporated in the purchase order, none of which were attached to the document placed in the record.

20. Meanwhile, in support of purchases made by FirstService, the Division was provided with a form numbered ST-119.1, dated December 6, 2006, and entitled "New York State and Local Sales and Use Tax Exempt Organization Certificate." The form specified on its face that it may be used "only when an exempt organization is the direct purchaser and payer of record." It listed petitioner as the vendor and the City of New York Department of Citywide Administrative Services (DCAS) as the exempt organization making the purchase. It also displayed tax identification number 136400434, which Mr. Weiss again speculated was that of the City of New York. The nature and dates of the transaction for which it was provided were not stated, nor was FirstService listed on the form.

21. Petitioner also placed into the record an unnumbered form, dated January 1, 2006, and entitled "New York State and Local Sales and Use Tax Exempt Organization Certificate." This form listed petitioner as the vendor and "GVA Williams Real Estate, A/A/F NYCDCAS" as the exempt organization. It contained as the certificate number EX-136400434. Again, the nature and dates of the transaction for which it was provided were not stated. Petitioner maintained that the Division previously accepted this form as an exemption certificate in support of FirstService's purchase of services. During his testimony, the auditor denied that assertion, and expressed numerous concerns with the document.

22. In May 2005, prior to the audit period, the Division issued Publication 765, entitled "Sales and Fuel Excise Information for Properly Appointed Agents of New York Governmental Entities," in order to aid in determining whether a person is a properly appointed agent and whether their purchases are exempt from taxation. Publication 765 specifically stated that

"[e]ffective July 1, 2005, when making a purchase of tangible personal property or services, the agent of a governmental agency must provide the seller with Form ST-122, *Exempt Purchase Certificate for an Agent of a New York Governmental Entity* . . . . A copy of Form DTF-122, *Certification of Agency Appointment by a New York Governmental Entity*, must be attached to Form ST-122 . . . . " The publication also stated that "[i]f the seller accepts a properly completed Form ST-122 . . . and Form DTF-122 in good faith, the seller may use the forms to substantiate an exempt sale."

23. The record is devoid of any forms ST-122 or DTF-122 for transactions involving either Colliers or FirstService.

24. Petitioner did not present any witnesses from MTA, DCAS, Colliers or FirstService to confirm the purported agency relationships. Likewise, there are no supporting affidavits or letters from any of these entities in the record.

25. The services at issue that petitioner performed for Colliers and FirstService were concededly protective or detective in nature and, if not exempt, were otherwise taxable.

26. On February 24, 2011, following the audit, the Division issued to petitioner notice of determination number L-035455040, which asserted $1,957,326.80 in additional sales and use taxes due, plus interest, for the period June 1, 2006 through February 28, 2009. The additional tax emanated from the aforementioned untaxed sale of reception services, which the Division deemed to be protective or detective services in nature, and the disallowed exempt sales.

27. A Bureau of Conciliation and Mediation Services conference was held on September 27, 2011 with regard to notice number L-035455040. By conciliation order of May 18, 2012, the amount of tax due was reduced to $1,120,215.72. The conciliation order contained no explanation for the reduction.

28. In May 2011, a second sales and use tax field audit of petitioner was commenced and eventually expanded the period at issue to include March 1, 2009 through February 29, 2012. Again, petitioner's books and records were requested, and the Division's auditor reviewed them in Conshohocken in September 2011. Ultimately, the Division and petitioner only disagreed on the tax treatment of the reception services provided during this later audit period to Credit Suisse, Deustche Bank, and Ogilvy & Mather. These services were of the same nature as those provided by petitioner to its clients during the previous audit period.

29. On March 26, 2013, following the second audit, the Division issued to petitioner notice of determination number L-039171574, which asserted $798,110.10 in additional sales and use taxes due, plus interest, for the period March 1, 2009 through February 29, 2012. The additional tax solely reflected the untaxed sales of reception services.

30. Additionally, on March 29, 2013, notice of determination numbered L-039183443, was issued to petitioner William Torzolini, as a responsible officer of petitioner for the period March 1, 2009 through February 29, 2012. Petitioners David I. Buckman and William Whitmore were issued similar notices of determination, numbered L-039183441 and L-039183442, respectively, for the period March 1, 2010 through February 29, 2012. Petitioners Torzolini, Buckman and Whitmore do not contest that they were responsible officers of petitioner for their respective periods.

31. Petitioner made a payment of $77,289.05 towards the statutory notices in order to stop interest from accruing and seeks a refund of this amount if its petitions are granted.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge concluded that based on the facts in this case, the services at issue were protective or detective in nature and subject to taxation under Tax Law § 1105 (c)

(1) (8). The Administrative Law Judge first explained that the taxability of any service under Tax Law § 1105 (c) must focus on "the service in its entirety, as opposed to reviewing the service by components . . . " citing ***Matter of SSOV '81, Ltd.*** (Tax Appeals Tribunal, January 19, 1995) and that the primary function of the service is the controlling factor in determining taxability (***id.***). The Administrative Law Judge found herein that a dissection of the service into taxable or nontaxable components was inappropriate (***id.***).

Accordingly, the Administrative Law Judge determined that the reception services were part of the security services, stating that the receptionists "clearly were the front person in petitioner's security team provided to its clients," and thus were protective or detective services in nature and subject to taxation under Tax Law § 1105 (c) (8).

With regard to the exemption issue, the Administrative Law Judge determined that petitioner was not entitled to an exemption from taxation for the receipts from services provided to Colliers and FirstService. The Administrative Law Judge explained that Tax Law § 1132 (c) creates a presumption of taxability and therefore it was petitioner's burden to prove that the receipts at issue were exempt from tax. The Administrative Law Judge further explained that pursuant to Tax Law § 1132 (c) petitioner would be relieved of the burden of proving that such receipts were exempt from taxation if it received from its customers properly completed exemption certificates in the form prescribed by the Division. The Administrative Law Judge concluded however, that petitioner was not entitled to this relief as the exemption certificates it received were neither properly completed nor in the form prescribed by the Division.

The Administrative Law Judge then noted that petitioner still had the opportunity to rebut the presumption of taxability based upon other evidence proving that the transactions at issue were transactions with exempt entities. In this case, petitioner's customers were not exempt

entities themselves, but sought exemptions on the basis of an agency relationship with exempt entities. Therefore, it was incumbent upon petitioner to prove that Colliers had an agency relationship with the MTA and that FirstService had an agency relationship with DCAS. The Administrative Law Judge did not find the evidence submitted by petitioner to be persuasive on this issue. In regard to the Colliers' agency agreement with MTA, the Administrative Law Judge found that despite there being some language in the agreement supportive of an agency relationship, the express language in the agreement stating that it did not create an agency relationship controlled. In regard to the FirstService agency relationship with DCAS, the Administrative Law Judge noted that petitioner submitted no contract between FirstService and the governmental entity creating an agency relationship, nor was there any corroborating evidence entered regarding the agency relationship. Thus, the Administrative Law Judge concluded that the receipts from services provided to Colliers and FirstService, the alleged agents of exempt entities, were subject to sales taxes.

ARGUMENTS ON EXCEPTION

Petitioner argues that sales tax is not imposed on reception services because state law treats the services provided by receptionists differently than the services provided by security guards, and the evidence in this case clearly shows that the reception services were different and distinct from those provided by the security guards and their supervisors.

With regard to the exemption issue, petitioner argues that it met its burden of proof because it accepted in good faith the exemption certificates from purchasers holding themselves out to be bona fide agents of exempt government entities, and that Administrative Law Judge, contrary to the applicable regulation, applied a higher standard of care than the good faith standard actually required. Petitioner asserts that in accordance with the applicable regulations,

when an exemption certificate is "accepted in good faith," and when a vendor has no knowledge that the exemption certificate or document appearing to be an exemption certificate issued by the customer is false or fraudulent, then the vendor is relieved of responsibility.

The Division argues that the Administrative Law Judge reached the correct conclusion that the reception services were part of the overall security services provided by petitioner and that petitioner did not provide sufficient evidence to establish that the disallowed claimed sales to exempt entities were not subject to tax.

OPINION

Reception Services

Tax Law § 1105 (c) (8) imposes tax upon the provision of:

> "[p]rotective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and watchman services of every nature other than the performance of such services by a port watchman licensed by the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith."

It is uncontested that the security guard services provided by petitioner are subject to tax pursuant to Tax Law § 1105 (c) (8). It is also uncontested that reception services are not one of the enumerated services upon which sales and use taxes are imposed (Tax Law § 1105 [c]). Thus, the issue is whether the reception services provided by petitioner constitute protective or detective services under the statute.

Petitioner argues that the facts in this matter clearly show that the services performed by its receptionists are reception services not subject to tax, while the Division argues that the facts in this matter clearly show that the services performed by petitioner's receptionists are protective or

detective services subject to tax. An examination of the facts indicates that the reception services provided by petitioner are really more of a hybrid.

There is no doubt that the qualifications for the receptionists were completely different than the qualifications for the security officers. Typically, petitioner recruited as security officers, people who were interested in law enforcement, including criminal justice majors and former police officers and military personnel. As a prerequisite to employment, such individuals were subjected to a thorough background check and were required to have special training and to be licensed under Articles 7 and 7-A of the General Business Law. Typically, petitioner recruited as receptionists individuals with hotel, airport or concierge/receptionist backgrounds. These individuals required no special training or license, and apparently were not subjected to a thorough background check.

There is also no doubt that the duties of receptionists were completely different from the duties of security officers. There were various levels of security officers. There were also ranging and stationary security officers. Their role was to serve as a deterrent to potential criminal activity and provide the clients with a safe and productive workplace. In order to perform their duties, security officers were provided with cell phones, handcuffs and, in certain cases, firearms. In contrast, receptionists were generally seated behind a desk in a building lobby and were responsible for greeting, screening and processing persons requesting access to the building, checking identification, issuing visitor passes and, when necessary, informing those that were not expected that they could not enter the building. They were not provided with cell phones, handcuffs or firearms. The difference between the two types of positions is highlighted by what would happen if someone refused to leave the building. In such a situation, the

receptionist was trained not to be confrontational and to contact a security officer who would handle it.

Petitioner is correct that the qualifications and duties of security officers and receptionists are quite different. The Division is also correct that there are some duties performed by receptionists that could be considered as protective in nature, such as checking identification and issuing visitor passes to help insure that only those that are supposed to gain access to the building do so. Therefore, an examination of the facts in this matter does not resolve the issues.

Thus, the question in this matter comes down to one of simply statutory construction - whether the term "protective and detective services" as used in Tax Law § 1105 (c) (8) includes the type of hybrid reception services that petitioner provides to its customers.

When construing a statute, the primary focus is on the intent of the Legislature in enacting the statute (McKinney's Cons Laws of NY, Book 1, Statutes § 92 [a]; ***see Matter of Sutka v Connors***, 73 NY2d 395 [1989]; ***Matter of American Communications Tech. v State of N.Y. Tax Appeals Trib.***, 185 AD2d 79 [1983], ***affd*** 83 NY2d 773 [1994]). When that intent is clear from the wording of the statute itself, the inquiry ends (McKinney's Cons Laws of NY, Book 1, Statutes § 76; ***see Matter of American Communications Tech. v State of N.Y. Tax Appeals Trib.***). However, when there is an ambiguity in the words of the statute, the inquiry extends to other methods of ascertaining legislative intent, including review of statutes *in pari materia* (***see*** McKinney's Cons Laws of NY, Book 1, Statutes, §§ 76, 92, 221; ***Matter of Guardian Life Ins. Co. of Am. v Chapman***, 302 NY 226 [1951]; ***Matter of American Communications Tech. v State of N.Y. Tax Appeals Trib.***). In questions of statutory interpretation where the issue is the imposition of a tax, the statute cannot be read to allow the government to tax anything more than

the clear terms of the statute allow (***see Matter of Grace v New York State Tax Commn.***, 37 NY2d 193 [1975], ***lv denied*** 37 NY2d 816 [1975]; ***Matter of Debevoise & Plimpton v New York State Dept. of Taxation & Fin.***, 80 NY2d 657 [1993]). Furthermore, when the question presented is strictly statutory construction, there is no cause to defer to the expertise of the state agency that administers the statute (***see Matter of Debevoise & Plimpton v New York State Dept. of Taxation & Fin.***; ***Matter of Trump-Equitable Fifth Ave. Co. v Gliedman***, 57 NY2d 588 [1982]).

There is no definition of either protective or detective services in Article 28 of the Tax Law (Sales and Compensating Use Taxes) to assist in answering the question of whether the term "protective and detective services" as used in Tax Law § 1105 (c) (8) includes the type of hybrid reception services that petitioner provides to its customers. Petitioner argues that we should be guided, if not bound, by Articles 7 and 7-A of the General Business Law and various pronouncements of the Department of State regarding same, in answering the question in the negative. The Division argues that protective and detective services encompass more than the licensed security guards that are the subject of Articles 7 and 7-A of the General Business Law, and that petitioner's receptionist services are, at least partially, protective or detective in nature. We find that the language of Tax Law § 1105 (c) (8), while not limited to the provision of security officers, is not intended to reach the type of hybrid reception services at issue herein.

While not an exclusive list, a review of the list of types of services set forth in Tax Law § 1105 (c) (8) indicates that the statute is intended to encompass those services that resemble those provided by petitioner's security officers. It includes alarm systems, detective agencies and guard, patrol and watchmen services of any nature. Checking visitor's identification and issuing

them passes to enter a building, are not comparable to the types of duties envisioned by the language of Tax Law § 1105 (c) (8).

We find that in reaching our conclusion it is also useful to look at the statutes governing the substance of the transactions before us. Indeed, in another case involving Tax Law § 1105 (c) (8), the Appellate Division, Third Department held that, as there was no definition of detective services in the Tax Law, it was appropriate to equate such services to the definition of "Private Investigator" contained in General Business Law § 71 (1) (***Compass Adjusters & Investigators v Commissioner of Taxation & Fin. of State of N.Y.***, 197 AD2d 38, 41 [1994]). We find that it is equally appropriate to equate the term protective services to the definition of "Watch, guard or patrol agency" set forth in General Business Law § 71 (2). As relevant to the current matter, that definition states that such terms:

> "shall mean and include the business of watch, guard or patrol agency and shall also mean and include, separately or collectively, the furnishing, for hire or reward, of watchmen or guards or private patrolmen or other persons to protect persons or property or to prevent the theft or the unlawful taking of goods, wares and merchandise, or to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes or other valuable documents, papers, and articles of value, or to procure the return thereof or the performing of the service of such guard or other person for any of said purposes."

We find this language consistent with our interpretation of the relevant statutory language, that the business of protecting persons and property is not meant to reach the type of hybrid reception services at issue. The duties of checking identifications and issuing visitor passes does not rise to the level of the protection of persons and property envisioned by either General Business Law § 71 or Tax Law § 1105 (c).

Finally, the Administrative Law Judge, citing ***Matter of SSOV '81, Ltd., Tax Appeals Tribunal*** (January 19, 1995), concluded that even if the reception services provided by petitioner

were found to be nontaxable, the primary function of the service provided by petitioner was a taxable security service and it was not appropriate to dissect such service into taxable and nontaxable components. However, petitioner's services could be provided separately, as opposed to the component parts of the dating service provided in ***SSOV***. While petitioner did not provide receptionist services without security officer services in New York, it did provide security officer services without having contracted to provide reception services. Indeed, even when contracted for together, the two services were invoiced and paid for separately. The two services in this matter are separate services, and, as such, the ***SSOV*** analysis is not controlling (***see also Compass Adjusters and Investigators v Commissioner of Taxation & Fin. of State of N.Y.***, 197 AD2d 38 [1994] [where taxpayer performed services both as licensed private investigators and licensed insurance adjustors]).

Exempt Services

After carefully reviewing the analysis given to this issue by the Administrative Law Judge, and the arguments made by the parties on exception, we affirm the determination of the Administrative Law Judge based upon the reasoning contained therein. We believe that the Administrative Law Judge completely and correctly addressed the issue of the taxability of the receipts from the services provided to Colliers and FirstService. We would only add that receipt of an improper exemption certificate denies petitioner the benefit of the presumption of its entitlement to the exemption (20 NYCRR 532.4 [b] [5]).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exceptions of AlliedBarton Security Services LLC, William Torzolini, David I. Buckman and William C. Whitmore are granted to the extent indicated in paragraph 4 below, but are otherwise denied;

2. The determination of the Administrative Law Judge is reversed to the extent indicated in paragraph 4 below, but is otherwise affirmed;

3. The petitions of AlliedBarton Security Services LLC, William Torzolini, David I. Buckman and William C. Whitmore are granted to the extent indicated in paragraph 4 below, but are otherwise denied; and

4. The Division of Taxation is directed to recompute the notices of determination dated February 24, 2011, March 26, 2013 and March 29, 2013 in accordance herewith, and as so modified, the notices are sustained.

DATED: Albany, New York
February 16, 2016

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Charles H. Nesbitt
Charles H. Nesbitt
Commissioner
By BAV with permission

/s/ James H. Tully, Jr.
James H. Tully, Jr.
Commissioner