

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-00(7)S  
Sales Tax  
February 2, 2000

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990330B

On March 30, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from KPMG LLP, Three Embarcadero Center, Suite 2000, San Francisco, CA 94111. Petitioner, KPMG LLP, provided additional information pertaining to this petition on April 13, 1999.

The issue raised by Petitioner is whether its client's on-line service of delivering Digital IDs is subject to sales or compensating use tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner's client ("the Company") is a provider of digital certificate solutions for businesses and individuals wanting to perform secure electronic commerce and communications over the Internet. A digital certificate, also known as a Digital ID or Internet ID, works very similarly to that of a state driver's license in that it identifies a unique individual to another party, but is of little use for anything else. A Digital ID typically contains the following: (1) Owner's public (electronic) key; (2) Owner's name; (3) Expiration date of the public key; (4) Name of the issuer (the certification authority, otherwise known as the "CA," that issued the Digital ID); (5) Serial number of the Digital ID; and (6) Digital signature of the issuer. The Digital ID is not a text file. The creation of a unique algorithm by the Company incorporates personal characteristics so as to create a wholly independent identifier for the purpose of secure communications.

The Company markets Digital IDs for servers, browsers, e-mail applications and software content. A customer applies for a Digital ID by first accessing the Company's Web site and then completing an on-line registration form. Once the Company authenticates the identity of the customer (via a third party), it delivers the Digital ID electronically over the Internet to the customer. The Digital ID is delivered through the Company's Digital ID Center, an on-line service that is open 24 hours a day, seven days a week.

The Company's service is offered on an annual subscription basis. Prices range between \$250 and \$1,200 per server per year for "Website Digital Certificates," depending on the version of digital certificate requested and the overall volume of web site digital certificates used by the customer.

The Company also offers "Enterprise Digital Certificate" services which are tailored to meet the specific needs of corporations, financial institutions, government agencies and other organizations that wish to issue digital certificates to employees, customers, citizens or trading

partners. This service is designed to support a wide range of digital certificate needs for both small and large user communities. It can be used by customers to provide digital certificates for a variety of applications, including controlling access to sensitive data, enabling digitally-signed e-mail and creating an online electronic trading community. Services vary based on the nature and complexity of the application and the degree of control customers desire to maintain. The service is designed to offer customers ease of use at a low initial investment.

To expand and complement its Enterprise Digital Certificate service, the Company employs experts in digital certificate architecture and application integration to provide a variety of design, development and implementation services. These services include integration with existing applications and databases, consulting on policies and procedures related to the management and deployment of digital certificates, training classes on the latest developments in security technology and the selection of enabled software and hardware to complement a digital certificate solution. Enterprise Digital Certificate services are offered as annual subscription services with pricing dependent upon the number of users to be supported, the complexity of the applications and the number of additional services provided. Customers can subscribe to the service through the Company's Web site, the direct sales force, selected international service providers or system integrators.

### **Opinion**

The Company delivers Digital IDs to businesses and individuals wanting to perform secure electronic commerce and communications over the Internet. Digital IDs provide a trusted means of authenticating the identity of the parties in an electronic transaction. They are used much the same way as conventional forms of identification, such as a driver's license, to provide evidence of the owner's identity and authority in a given transaction.

Customers apply for a Digital ID by accessing the Company's Web site and completing an on-line registration form. Once the customer's identity has been authenticated, the Company personalizes a Digital ID by the creation of a unique algorithm, thereby assuring a unique identifier for the customer. The Digital ID is then delivered to the customer electronically over the Internet through the Company's Digital ID Center. The use of the Digital ID by the customer in sending an electronic message provides the basis for assuring the identity of the customer as the sender.

The Digital ID Center is an on-line service that is open twenty-four hours a day, seven days a week. The service is offered on an annual subscription basis and pricing depends on the version of Digital ID requested. The Digital ID is not a text file. The Company is not in the business of selling software. The Company provides an identification service in order to perform secure electronic commerce transactions.

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Section 1105(c) of the Tax Law imposes sales tax upon the receipts from every sale, except for resale, of certain enumerated services. The Company's provision of Digital IDs does not constitute any of the services enumerated under Section 1105(c) of the Tax Law. Therefore, in those instances where the Company charges its customers for the electronic delivery of Digital IDs, without the performance of any other taxable service or in conjunction with the sale of tangible personal property, such charges are not subject to New York State and local sales or compensating use tax.

It is noted that if the additional systems integration services the Company offers for sale include the installation or sale of computer hardware or the selection and sale of pre-written software in order to accomplish the integration of software packages, receipts from the sale of such property or services may be subject to sales tax under Sections 1105(a) and 1105(c)(3) of the Tax Law (see Virtual Systems Group, LLC, Adv Op Comm T&F, October 9, 1998, TSB-A-98(71)S, for a more in-depth discussion on the sales taxability of systems integrations services).

It is also noted that the consulting, design, training and system engineering services the Company may provide do not constitute taxable services described in Section 1105(c) of the Tax Law. The service of installing computer software, custom or pre-written, is exempt from tax pursuant to Section 1115(o) of the Tax Law. Accordingly, the Company's receipts from the sale of any of these services and the on-line delivery of the Digital IDs are not subject to sales and use taxes provided that they are not performed for customers in conjunction with the sale of taxable tangible personal property or services and billed as a lump sum with the taxable items on the invoice or other document of sale given to the customer (see Salomon & Leitgeb CPA's, LLP, Adv Op Comm T&F, July 23, 1997, TSB-A-97(44); Virtual Systems Group, supra).

DATED: February 2, 2000

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.