

New York State Department of Taxation and Finance  
**Office of Counsel**  
**Advisory Opinion Unit**

TSB-A-10(6)S  
Sales Tax  
February 17, 2010

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S081015A

Petitioner, [REDACTED] asks whether its data mining/data warehousing and on-line advertising services are subject to New York State sales and use tax. We conclude that neither service is taxable.

**Facts**

Petitioner is a provider of online e-business solutions. It generates revenue from two distinct service lines: (1) data warehousing and data mining services; and (2) online advertising services. Petitioner's customers consist of businesses that host and maintain significantly large and complex websites that have large volumes of web traffic.

*Data Warehousing and Data Mining Services*

Petitioner provides its data warehousing and data mining services by gathering data from customer websites via internally developed software that is embedded on the customer's website. The software is licensed to the customers as part of the services provided for the duration of the contract and is solely licensed for the purpose of providing the services to the customer. The software tracks usage of client websites, including the number of visitors per webpage, the time of day the most website "hits" occur, and how long each visitor remained on the site. Upon gathering this data, the software streams data to Petitioner's servers where it is analyzed. Petitioner's data warehousing and data mining services include, but are not limited to, online customer behavior studies and online customer usability studies, both of which help Petitioner's customers identify weaknesses in website usability and online advertising effectiveness.

When Petitioner provides data warehousing and data mining services to a customer, it issues a report that is custom in nature to the particular customer's business. These reports typically detail the issues that arise during data mining, issues that arise from monitoring web traffic and issues that arise from monitoring visitor behavior. Petitioner's customers utilize these reports to more efficiently advertise to their target audiences. Petitioner assigns all rights in the report to the customer and it is not able to use or resell the reports. The company never distributes these reports to any party other than the customer for whom the reports are created. Customers are permitted to use the report solely for the purpose of creating targeted ad packages for advertisers and selling and promoting advertising solutions to clients.

The software that resides on customer websites as part of the above service is licensed to the customer for the sole purpose of allowing Petitioner to perform data warehousing and data mining services. Customers give no consideration for the software license and are never able to purchase the software, as Petitioner is not in the business of selling, renting, leasing or licensing its software. The customer is given no right to use or control over the software that is embedded on the customer's website. For example, the customer has no ability to change any of the settings on the software. Petitioner also maintains dominion and control over the software at all times because customers may not change, sublicense, rent, sell, or distribute the software.

*Online Advertising Services*

Petitioner's online advertising clients hire Petitioner to assist in running advertising campaigns to attract customers to their websites. Petitioner reviews the customer requirements and determines how to run the campaign. Petitioner sometimes earns commissions from its advertising customer for placing advertising. Once the campaign starts, Petitioner monitors its success and may make changes as needed. At no time does Petitioner gather additional data from these online advertising services and provide such data to third parties.

**Analysis**

Tax Law section 1105(c)(1) imposes sales and use tax on the service of "[t]he 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." That section excludes from tax the sale 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." Because the information conveyed by Petitioner relates exclusively to the client's website and Petitioner is prohibited from selling the same information to third-parties, that information qualifies for this exclusion (*Matter of New York Life Ins. Co. v. State Tax Comm'n*, 80 A.D.2d 675, *aff'd sub nom. Matter of Metropolitan Life Inc. Co. v. State Tax Comm'n*, 55 N.Y.2d 758 [1981]).

Petitioner's sales of advertising services are also not taxable in light of Tax Law section 1105(c)(1)'s exclusion for "the services of advertising or other agents, or other persons acting in a representative capacity" (*see also* Sales Tax Reg. 527.3[b][5]). Assuming that any report delivered as a part of this service relates only to Petitioner's customer's web site, may not be furnished to a third-party, and does not contain data from a common data base, the report would not constitute an information service subject to tax under Tax Law section 1105(c)(1).

DATED: February 17, 2010

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Jonathan Pessen  
Director of Advisory Opinions  
Office of Counsel

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.