

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-16(18)S
Sales Tax
May 5, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S131114A

The Department of Taxation and Finance received a Petition for Advisory Opinion from Petitioner [REDACTED]. Petitioner asks whether its service, which provides advertisers with information about Internet users, is subject to sales and use tax. We conclude that the service is a taxable information service.

Facts

Petitioner offers a service that makes groups of individual Internet users available to its advertiser customers, who then serve an advertisement (“ad”) to each individual user in that group. In order to provide this service, Petitioner collects and analyzes data on approximately 700 million individual users across the Internet. Petitioner does not provide reports on the information it collects, but uses this information to organize a mechanism (technology that includes HTML tags, Internet cookies and filters to group or segment those cookies) for advertisers to target individual users for relevant ads.

Data Collection

Petitioner pays a carefully chosen set of websites to place an HTML tag, a small piece of computer code, on selected pages of their sites. Each HTML tag generates a cookie when a user interacts with that website, which collects specific data about the unique website and the website's users (the "End-Users"). The website owner is the “data provider.” The cookie becomes associated with an End-User's Internet browser and can then collect new information about subsequent behaviors of that End-User as the End-User travels to other sites with which Petitioner has a direct, contractual relationship. Simply put, a cookie stores End-User activity across websites, creating useful information where none previously existed. Without its HTML tags on website pages and the cookies these tags generate, Petitioner would not be able to create the information that it collects regarding a website's End-Users.

Data Segmentation

Through its technology, Petitioner is able to mine and generate specific and unique data about the online search and browsing habits of the End-User. The data generated is then passed into Petitioner's platform. Once the data arrives on Petitioner's platform, the data is segmented into a useable format for the benefit of Petitioner's customers. Segments are a collection of End-Users (each End-User is represented by a cookie) and usually are categorized by a type of action or an interest attributable to the End-User. Thus, one segment of End-Users might be people who searched for a particular model of motor vehicle. Another segment of End-Users may have an interest in a specific activity, such as hiking. All segments are created specifically for advertisers to target with advertising. Petitioner's segments that originate directly from a data provider can be sold with the data provider's name attached or can be conveyed in a way that provides anonymity to the data provider.

Data Exchange

Petitioner refers to its data marketplace as an “Exchange” or a “Data Exchange.” An Exchange is merely the collection of segments that is made available to each customer. Petitioner’s customers then make those segments available to their clients for ad targeting. Each customer is able to select its mix of segments and thus receives a potentially different mix of End-Users. The segments within an Exchange are created exclusively by Petitioner, mostly from data collected online, but approximately 5% comes from other offline data providers. Offline data is data collected from a source other than on the Internet or any other digital source. An example of offline data is a panel or a group of people voluntarily providing information about themselves, such as television viewers providing information to TV ratings companies about their viewing habits.

Customers

Petitioner's customers are advertisers and marketing groups. They use the service to deliver a targeted online advertisement or marketing campaign in "real time" to relevant End-Users. Petitioner’s customers decide which ad to pair with each cookie through complex ad serving technology. This process is continuously evolving. As additional information is added or subtracted from Petitioner’s cookies, that information is then segmented and delivered to each customer.

Billing Method

Petitioner traditionally bills its customers on a usage basis, where the advertiser gets charged each time an ad is served to an End-User (as represented by a cookie). Because the information provided by Petitioner to its customers is devoid of value as a practical matter if it is not integrated with an advertisement, there is no payment for "unused" cookies.

Cookie Technology

Each time an End-User visits a website that has Petitioner’s HTML tag on it, that tag is fired (this is, the computer code executed) and data about the End-User’s behavior on that site is stored in a cookie. When the End-User leaves the current website to go to a new website, if Petitioner has its HTML tag on that site, a cookie can store information about an End-User’s subsequent movements as that End-User goes from website to website. As the technology tracks the End-User's behavior, it creates a dynamic profile of the End-User's search habits, duration of usage, etc. Each time the End-User visits a new location, there is the potential that the new information will "overwrite" or destroy the old information. This process is determined by complex algorithms developed by Petitioner to determine relevancy of the new information at any given moment in time. Petitioner can generate the segments or groups of targeting mechanisms (cookies) for subsequent integration with a customer's ad impression only after Petitioner's proprietary system observes the End-User’s Internet behaviors on the websites of its contractually approved partners. Once cookies are generated and grouped into segments, they are made available to Petitioner's customers. This segmentation occurs in real time as the segment constantly receives new information from the actions of millions of Internet users each day. A cookie typically appears in more than one segment. Cookies last for up to 90 days or until the End-User deletes them.

A cookie and the data associated with it have variable useful lives for a number of reasons. To begin, the data survives until the Internet user deletes the cookie. At that time, the targeting mechanism is deleted so the cookie and its information is no longer available to a customer. Further, a cookie’s value decreases over time as the data becomes older and less

relevant to advertisers. An End-User's data is constantly changing, as more up-to-date information becomes available, which is what Petitioner's customers want to purchase.

Custom Segment for Customers

The collected data is not sold by individual End-User or cookie, but instead is distilled into segments by a number of rules and filters. These rules and filters can be applied by Petitioner, as well as Petitioner's customers. The rules and filters can be applied to all data created by Petitioner based on End-User purchases or based on the End-User's specific age/gender/geographic characteristics, using the most-recent data.

Data Velocity and Uniqueness of Datasets to Customers

The velocity at which data becomes available to a customer is very important due to the real time nature of marketing. In many cases, there is a small window to advertise or influence a customer's decision to buy a product. For example, after an End-User buys a plane ticket, the End-User will typically need a hotel. The hotel purchase may happen quickly, so it is important to serve that hotel advertisement in a timely manner. The gathering, processing and delivery (referred together as velocity) of information varies based on the number of times an End-User's activity is logged and may increase or decrease based on an individual End-User's activities. While a handful of data points provided to customers with similar requests may overlap, based upon the filters applied by each customer and the passage of time (due to the velocity with which information is gathered from the Internet), it becomes virtually impossible for the aggregated information to generate an exact mirrored set of segments for different customers. Petitioner generates information via hundreds of billions of cookies each month. Due to cookie deletion, approximately one-third of the End-Users that received a browser cookie at the beginning of the month will no longer have a cookie by the end of the month. Petitioner's income for the service is connected to the customer's success in integrating the information to generate sales.

Data Providers' Data Use

Data Providers also can use Petitioner's cookies to gather information about their End-Users. Petitioner allows the online data providers of its data to use the data to target the data providers' users in the same manner as its typical customers.

Analysis

Tax Law § 1105(c)(1) imposes a sales tax on receipts from the service of furnishing 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. Section 1105(c)(9) imposes a sales tax on receipts from the sale of an information service otherwise taxable under § 1105(c)(1) that is furnished by means of telephony or telegraphy or telephone or telegraph service instead of by printed, mimeographed, or multigraphed matter. Information services that are personal or individual in nature and that are not or may not be substantially incorporated in reports furnished to other persons are excluded from the sales tax imposed by §§ 1105(c)(1) or 1105(c)(9).

Petitioner's service of providing information about End-Users to Internet advertisers constitutes an information service for purposes of Tax Law § 1105(c)(1) and (9). *See Alan Drey Co. v State Tax Comm.*, 67 AD2d 1055 (3d Dep't 1979); TSB-A-10(40)S. The exclusion for

information services that are “personal or individual in nature and that are not or may not be substantially incorporated in reports furnished to other persons” does not apply here. The first criterion in the exclusion (that the information sold be personal or individual in nature) is satisfied only by information that is “uniquely personal” or individual in nature. *See Matter of Allstate Ins. Co. v. Tax Commn. of the State of New York*, 115 AD2d 831, 834 (3d Dep’t 1985), *aff’d* 67 NY2d 999 (1986). It is the source of the information that controls whether the report prepared will meet the criteria of “personal and individual.” *See Matter of ADP Automotive Claims Service Inc.*, Tax Appeals Tribunal, August 8, 1991, *aff’d* 188 AD2d 245 (3d Dep’t 1993). Information is not uniquely personal or individual in nature if it comes from a common source or a data repository that itself is not confidential. *See Id.*, 188 AD2d at 248. Here, most of the information about End-Users is collected by Petitioner through its relationship with data providers who are free to sell the same information to others. Further, approximately 5% of the information Petitioner uses comes from other information service providers. This is not “uniquely personal” information covered by the exclusion in Tax Law § 1105(c)(1), but rather is more akin to the mailing lists found taxable in *Alan Drey, supra*, and the list of e-mail addresses found taxable in TSB-A-10(40)S. *Compare Matter of New York Life Ins. Co. v. State Tax Commn.*, 80 A.D.2d 675, 676 (3d Dept 1981), *affd. sub nom. Matter of Metropolitan Life Ins. Co. v. State Tax Commn.*, 55 N.Y.2d 758 (1981) (confidential character reports prepared for life insurance companies after interview with the insurance applicants found to qualify for the personal or individual exclusion). The fact that no one customer will get exactly the same information as another does not render the personal or individual exclusion applicable, because mere customization of the information provided to meet the specific needs of a customer does not exclude the sale from the imposition of the tax. *See Id.* Indeed, even in a case where it is “a virtual mathematical impossibility that all or part of a report to one client would be duplicated in a report to any other client,” the Third Department has found the personal or individual exclusion inapplicable. *See Rich Products Corp. v. Chu*, 132 AD2d 175, 177 (3d Dep’t 1987).

Accordingly, Petitioner’s service is a taxable information service.

DATED: May 5, 2016

/S/

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.