STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

<u>ADVISORY OPINION</u>   <u>PETITION NO. S141009A</u>

The Department of Taxation and Finance received a Petition for Advisory Opinion from ██ ("Petitioner"). Petitioner asks whether the fee charged for a report analyzing a specific client's customers' habits and how to improve the client's customer base is subject to sales and compensating use tax.

We conclude that Petitioner's fee for a report analyzing customer data that incorporates some information personal to the client, but also includes general information that is an integral part of the service, is a service subject to sales and compensating use tax under Tax Law § 1105(c)(1).

Facts

Petitioner is an online information services company that provides clients with detailed reports of their potential customers' behavior. Petitioner uses a variety of sources to obtain this information, including Internet traffic to the client's website, surveys designed to answer questions specific to the client, and general information pertaining to the industry of the client. This information then is compiled into a report that is provided to the client for a fee.

The general information used in these reports is industry specific, but not client specific, and therefore may be utilized by the Petitioner in other reports for similarly-situated clients. According to Petitioner, the primary purpose of this service is to provide clients with the analysis of personal data. Therefore, all reports contain client specific data that will not be utilized in any other reports as well as general information. In order to provide clients with information specific to their websites, Petitioner analyzes publicly available sources to create benchmarks and to measure how a particular client's website traffic rates compare to others. Petitioner maintains that the information available from publicly obtained sources is "inconsequential" to the provision of its service.

Analysis

Tax Law § 1105(c)(1) imposes sales and compensating use tax on information services. However, this section excludes from the imposition of sales tax "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."

Petitioner's reports are information services subject to sales tax under Tax Law section 1105(c). "The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service." 20 NYCRR 527.3(a)(2). Petitioner's reports are compilations of data that include information specific to a client, as well as industry related information that may be included in reports provided to multiple clients.

The exclusion pertaining to information that is personal or individual in nature, and that is not or may not be substantially incorporated in reports furnished to other persons, is inapplicable to Petitioner's reports. The first criterion is satisfied only by information that is uniquely personal or individual in nature. *Matter of Allstate Ins. Co. v. Tax Commn. of the State of New York*, 115 AD2d 831 (3d Dep't 1985), *aff'd* 67 NY2d 999 (1986); *Twin Coast Newspapers, Inc. v. State Tax Commission*, 101 AD2d 977 (3d Dep't 1984). It is the source of the information that controls whether the report prepared will meet the criteria of "personal and individual." *Matter of ADP Automotive Claims Service Inc.*, Tax Appeals Tribunal, August 8, 1991. 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 Matter of ADP Automotive Claims Service Inc. v Tax Appeals Tribunal,* 188 AD2d 245 (3d Dep't 1993); *Rich Products Corporation v Chu*, 132 AD2d 175 (3d Dep't 1987); *Towne-Oller & Assoc. v State Tax Comm*, 120 AD2d 873 (3d Dep't 1986); *Alan/Anthony, Inc.*, TSB-A-92(51)S. A portion of the information in Petitioner's reports comes from public sources and, thus, is not personal or individual in nature. In addition, the industry-specific information contained in the reports may be included in reports to similarly-situated clients Thus, Petitioner's reports do not satisfy the second criterion of the exclusion. *See Matter of Rich Products.*, *supra*; *Twin Coast Newspapers*, *supra*.

Even when the information provided in a report is customized in some manner, the information service would still be taxable if customized information is substantially derived from a common data source that is not confidential, e.g., a common data source maintained by the information service provider. *See Matter of Rich Products.*, *supra*; *Matter of Towne-Oller and Associates*, *supra*; *Economic Cycle Research Institute, Inc.*, TSB-A-97(42)S. Because Petitioner's reports include general information pertaining to certain industries, or from the Internet, the reports would be subject to sales tax as taxable information services.

An information service can be considered "personal or individual in nature" if a *de minimis amount* of the data incorporated in the reports is derived from public sources. *See* 20 NYCRR 527.3(b)(2) (example 2) (stating that the use of general tax tables in calculating client's payroll withholdings falls within this exception); *Matter of the Petition of Automatic Data Processing, Inc.* TSB-H-85(164)S (May 8, 1985); *see also* TSB-A-12(24)S. However, that is not the case here. Petitioner's description of its service states that non-personal information may be included in reports provided to multiple clients. While Petitioner contends that the public information is "inconsequential" to its service, its website states that its service provides the ability to "monitor competition and benchmark performance." Without the use of non-personal information about a client's particular industry, a comparison of the client's performance relative to its competitors would not be possible. Thus, the use of non-personal information to provide such reports does not appear to be *de minimis;* rather, it is an integral component of the

Petitioner's services. Therefore, Petitioner's reports are not "personal and individual" in nature and are subject to sales tax under Tax Law § 1105(c)(1).

DATED: December 7, 2016

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DEBORAH R. LIEBMAN
Deputy 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 of 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.