

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-97(56)S  
Sales Tax

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960607A

On June 7, 1996, a Petition for Advisory Opinion was received from Michael E. DeMarco, CPA, O'Keefe & Moret, CPA, PC, 55 Maple Avenue, Suite 508, Rockville Centre, New York 11570. Petitioner, Michael E. DeMarco, submitted additional information pertaining to the Petition on August 8, 1996.

The issue raised by Petitioner is whether the representation of clients on the Internet or the sale of a custom report to clients (electronically or in print) from leads collected on the Internet, is subject to the sales and/or compensating use tax.

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

"X" has a web site on the Internet. A client wishing to obtain leads for potential customers signs up with "X" by completing an order form. The client establishes on the order form the category of interest for its potential customers (e.g., antique cars or antique woodworking). Once its category of interest has been established, it is added to the web site where there are numerous listings of categories of interest. Each category of interest represents a client of "X."

An individual "surfing the net" and stopping at this web site may see a category of interest for which he or she would like more information. In that case, the individual selects the category and provides personal information (name and address) and presses a button on his or her keyboard. At that point, the category of interest and personal information are electronically sent to "X."

"X" reviews and edits the information transmitted and collected for each client. On a monthly basis, "X" prepares a custom report of leads for each client. Each report is unique as it only contains the names and addresses for the specific category of interest for a particular client. Only one client is represented for each category of interest. The report may be sent electronically or by mail to the client. "X" then bills the client by the number of leads provided to the client. There is no charge by "X" to the client for design or monthly access.

Section 1105 of the Tax Law provides in part:

Imposition of sales tax.--On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

\* \* \*

(c) The receipts from every sale, except for resale, of the following services:

(1) The 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, but excluding 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, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, radio broadcasters and television broadcasters in the collection and dissemination of news, and excluding meteorological services. (Emphasis added.)

In this case, "X" is not selling tangible personal property. The customized report furnished by "X" to each client showing the names and addresses of prospective customers is personal in nature and will be given only to a particular client and will not be substantially incorporated in reports furnished to other persons. Accordingly, petitioner's representation of clients on the Internet and the sale of the custom reports are not subject to sales and compensating use tax.

DATED: September 3, 1997

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

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