

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-10(38)S
Sales Tax
August 20, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S080227A

On February 27, 2008, the Department of Taxation and Finance received a Petition for Advisory Opinion from Anchin, Block and Anchin, LLP., 1375 Broadway, New York, New York 10018. Petitioner provided additional information pertaining to the Petitioner on May 23, 2008, and July 1, 2008.

The issue raised by Petitioner, Anchin, Block and Anchin, LLP, is whether certain online advertising products are subject to sales tax.

Facts

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

Company X provides a Web platform that allows its clients to monitor, purchase, manage and evaluate online advertising across multiple third party ad networks. Clients set up their advertising network accounts at Company X's Web site, accessed by username and password. No software is licensed by Company X to clients or downloaded from Company X's Web site to client's computers. Company X, located in Dallas, Texas, will retrieve, analyze, and present data to clients, such as keyword bidding and the number of hits on the clients' ads on various sites broken down by different times of the day. Company X's Web site makes recommendations for how the client might have a more successful advertising campaign. Using Company X's Web site, the client can send detail and instructions to the advertising networks' servers. No comparison or benchmarking is done between Company X's clients and other businesses' online advertising. Company X employs regression analysis and predictive algorithms to deliver recommendations to boost and maintain optimal advertising performance. Clients can produce and export customized reports featuring selective metrics, trends, and most and least successful executions. Company X's business receipts are based on a percentage of the clients' overall advertising expenditures through the use of the service.

Analysis

Section 1105(c)(1) of the Tax Law imposes sales tax upon every sale of the furnishing of information by printed, mimeographed, or multigraphed matter including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, excluding the furnishing of information which is personal or

individual and which is not or may not be substantially incorporated into reports furnished to other persons.

Section 1105(c)(9)(i) of the Tax Law imposes sales tax on the sale of an information service that is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature, such as information services provided through 800 or 900 numbers, mass announcement services, or interactive information network services. However, the tax imposed by section 1105(c)(9) does not apply to an information service unless it would otherwise be subject to taxation under section 1105(c)(1) of the Tax Law if it were furnished by printed, mimeographed, or multigraphed matter, or by duplicating written or printed matter in any other manner. Section 1105(c)(9)(ii) of the Tax Law imposes an additional tax at the rate of 5% on the sale of an information service subject to tax under section 1105(c)(9)(i) that is received by the customer exclusively in an aural (i.e., audible) manner.

In the situation described, Company X tracks hits on the clients' ads on various sites and Web search engines. This information is gathered and analyzed to provide reports to clients relating to the on-line activity of their potential customers. For example, reports provided by Company X will show clients that their advertising on a certain Web site during certain time periods is not being accessed as often as the client's same advertising placed on other Web sites in the same or different time slots. The information allows Company X's clients to take better advantage of their advertising dollars by placing their ads in the proper location where their target market is more effectively reached. No comparison of data between multiple advertisers or information relating to advertising of competitors is provided by Company X to its customers.

Company X is making sales of a service in which Company X collects, compiles, and analyzes information regarding the activity levels of the client's Web advertising. Company X is not licensing software to clients. While Company X may use software to provide its service, the nature of the transaction between Company X and its clients relates to the information that the client is receiving on its Web advertising.

The information provided by Company X to its client is based on the specific activities occurring within the various search engines with respect to that client's ads. Recommendations made to the client are based on the analysis of that client's specific data, and are not based on, and do not include, data relating to activity regarding other advertisers. To the extent that these services might be considered information services subject to the taxes imposed pursuant to section 1105(c) of the Tax Law, it appears these services will qualify for the exemption from tax for sales of information which is personal and individual and is not or may not be substantially incorporated into reports submitted to others. Therefore, provided the information as to one client's activity is not sold, nor available for sale, nor substantially incorporated into reports furnished to other advertisers, and does not contain data from a

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common data base, the information service being provided by Company X to its clients is personal and individual in nature and is not subject to the sales tax. *See* Adv Op Comm T&F, February 17, 2010, TSB-A-10(6)S.

DATED: August 20, 2010

_____/S/
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.