

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

TSB-A-20(3)S
Sales Tax
April 28, 2020

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance (“the Department”) received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether the service it provides to its customers are subject to sales tax.

We conclude that Petitioner’s service is an information service that is personal or individual in nature and, therefore, not subject to sales tax.

Facts

Petitioner’s customers are businesses that advertise on the internet. Typically, a business that advertises on the internet must monitor the effectiveness and performance of its advertising campaigns by logging in separately to each advertising platform and downloading reports from each platform. Petitioner automates that process for its customers. Customers provide their login credentials to Petitioner for the advertising platforms they use. Petitioner downloads the customer’s relevant data, assembles it, analyzes it and reports it to the client daily in a single consolidated database. The customer pays a monthly subscription fee to run ad hoc or scheduled reports from the database. Customers use an online dashboard to select from a menu of services provided by Petitioner and to specify the format of deliverable reports. The reports provided to each customer are specific to that customer and relate to that customer’s own advertising campaigns. The reports are not shared with any other customers and do not include information compiled by Petitioner from other customers or from public sources.

Analysis

The Tax Law imposes sales and use tax on retail sales of tangible personal property, including prewritten software, and the sale, except for resale, of certain services. *See* Tax Law §§ 1101(b)(6); 1105(a), (c). Among the services subject to tax is 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. Excluded from the tax on information services are advertising services and the furnishing of information that is “personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons.” Tax Law § 1105(c)(1); *see also* Tax Law § 1105(c)(9). Information is not “personal or individual in nature” for purposes of this exclusion 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 (1993), *lv. denied*, 82 NY2d 655

(1993); *Allstate Insurance Company v. State Tax Commission*, 115 AD2d 831 (3d Dept. 1985), *aff'd*. 67 N.Y.2d 999 (1986).

Here, Petitioner is providing an information service because it obtains its customer data from various advertising platforms, compiles and analyzes that data, and presents that data to the customer in a consolidated database. However, the services provided to each customer are excluded from tax because the information is personal and individual to each customer and is not incorporated into reports furnished to other customers. The information obtained by Petitioner from the various advertising platforms is specific to the individual customer. Moreover, a customer can access only the information specific to its own advertising campaigns. Reports provided to a customer are specific to that customer's campaigns and are not shared with other customers, either directly or in anonymized form. Accordingly, we conclude that Petitioner's information service is personal or individual in nature and, thus, not subject to sales tax. *See e.g.*, TSB-A-16(22)S.

Finally, we conclude Petitioner's service does not constitute the sale of prewritten computer software. The primary function of Petitioner's service is to compile the performance metrics of its customers' advertising campaigns from multiple advertising platforms. The provision of access to a "dashboard" by which a customer can access its information and select the formatting of reports does not change the nature of the service.

DATED: April 28, 2020

/S/

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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 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.