

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

TSB-A-95 (33)S  
Sales Tax  
August 14, 1995

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950417A

On April 17, 1995, a Petition for Advisory Opinion was received from Mike Levy, 15 Elm Drive, East North Port, New York 11731.

The issue raised by Petitioner, Mike Levy, is whether advertising on the Internet is subject to sales tax.

Petitioner's company, Cyberactive, sets up "Virtual Storefronts" for companies on the Internet. Their clients' products are displayed and described in ads that are created by Petitioner and run on the Internet.

Section 1105(c)(1) of the Tax Law states that:

(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. (emphasis supplied)

Section 527.3(b)(5) of the Sales and Use Tax Regulations states that:

Fees for the services of advertising agencies or other persons acting in a representative capacity are excluded from the tax. Advertising services consist of consultation and development of advertising campaigns, and placement of advertisements with the media without the transfer of tangible personal property. The furnishing of a personal report containing information derived from information services, by an advertising agency, to its client for a fee is not a taxable information service. However, if an advertising agency is engaged only for the purpose of conducting a survey or if a survey is separately authorized and billed to the customer, the taxability of such survey is determined in accordance with the provisions of subdivision (a) of this section and the other provisions of this subdivision. Sales of tangible personal property such as layouts, printing plates, catalogs, mailing devices

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or promotional handouts, tapes or films by an advertising agency for its own account are taxable sales of tangible personal property. (Emphasis supplied)

Provided Petitioner does not sell any tangible personal property, its charge for running advertising on the Internet is not subject to sales tax in accordance with Section 1105(c)(1) of the Tax Law and Section 527.3(b)(5) of the Sales and Use Tax Regulations.

DATED: August 14, 1995

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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