

## Sales/Use/Indirect:

### New York: Creating, Operating and Hosting Websites and Mobile Apps Deemed Not Taxable

*TSB-A-20(70)S*, N.Y. Dept. of Tax. & Fin. (11/24/21). Responding to a taxpayer inquiry on whether its services of creating, operating and hosting websites and applications accessed on mobile devices are subject to New York state and local sales and use tax, a New York Department of Taxation and Finance advisory concludes that the taxpayer's services are *not* subject to state and local sales and use tax because they are not enumerated services subject to tax pursuant to Tax Law § 1105(c). Specifically, the advisory explains that website development services – including consulting, designing and website creation – are *not* enumerated services subject to New York state and local sales and compensating use taxes; moreover, where a developer maintains exclusive control over the website, the service of developing and operating the website also does *not* involve any transfer of prewritten computer software and thus is not subject to New York sales or use tax. The advisory additionally explains that in instances where a software upgrade is designed and developed to the specifications of a specific purchaser, its sale to that purchaser is exempt as custom software if the charge for such upgrade is reasonable and separately stated. The taxpayer's optimization and reporting service that includes weekly reports based on third-party analytics of its clients' mobile websites and monthly recommendations for improving optimization also is *not* subject to New York state and local sales and compensating use tax, because such information is individual in nature and will *not* be incorporated in reports to other clients as a taxable information service. Please contact us with any questions.

**URL:** [https://www.tax.ny.gov/pdf/advisory\\_opinions/sales/a20-70s.pdf](https://www.tax.ny.gov/pdf/advisory_opinions/sales/a20-70s.pdf)

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