

Sales/Use/Indirect:

New York ALJ Says Online Loan Marketplace's Services are Not Taxable Information Services

Determination DTA No. 829714, N.Y. Div. of Tax App., ALJ Division (12/9/21). An administrative law judge with the New York Division of Tax Appeals held in a taxpayer's favor that the services it provides to its lenders that pay a fee for the use of its online loan marketplace are not subject to New York sales and use tax because the primary function of the online loan marketplace is to facilitate the writing of loans by its customers and network of lenders, rather than provide a taxable information service. In doing so, the judge reasoned that while the provision of information does take place in these transactions – that is, the transmission of a prospective borrower's financial information and loan requirements to a matched lender – the taxpayer's primary function is to consummate a loan as the taxpayer often does not get paid unless the loan closes. In this respect, the judge concluded that the lending institution is not paying for the information transmitted by the online loan marketplace, but instead a commission on the loan. The judge agreed with the taxpayer that it is the primary function of a service, and not the means of effectuating the service, that dictates whether the service is taxable. In this case, the judge concluded that the taxpayer does *not* provide a taxable information service "as the furnishing of information is but a means to the end – the actual writing of a loan." Under the facts, the online loan marketplace does not connect prospective borrowers or lenders participating on the marketplace with non-participants, nor do the marketplace's lending customers have full access to prospective borrowers that each lender can contact on its own; only a matched borrower gets matched with a prospective lender which occurs in real time. Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/determinations/829714.det.pdf>

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