

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

TSB-A-92 (47) S
Sales Tax
June 18, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920116A

On January 16, 1992, a Petition for Advisory Opinion was received from Alan/Anthony, Inc., 145 Avenue of the Americas, 2nd Floor, New York, New York 10013.

The issue raised by Petitioner, Alan/Anthony, Inc., is whether the providing of the marketing consultation as described below is subject to sales and use taxes.

Petitioner provides advice and counseling to companies with regard to their marketing efforts. No tangible personal property is created. The specific services provided, as indicated in a sample of its typical marketing consultation agreement, include:

1. Consultation with a customer and its staff on marketing issues.
2. Development of a written marketing plan.
3. Development of customer questionnaires and telemarketing scripts for use by them.
4. Review of existing sales literature and the submission of verbal and written recommendations for its improvement.
5. Advice and counsel on the selection and installation of marketing information systems.

Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services. The service of providing marketing consultation is not one of the services enumerated under Section 1105(c) of the Tax Law and, therefore, such service is not subject to sales or use tax.

In Greenstone & Rabasca Advertising Inc., Adv Op St Tx Comm, September 9, 1986, TSB-A-86(35)S the State Tax Commission opined as follows:

- A. Consulting and public relations services; planning and preparing advertising budgets, news releases, and publicity campaigns.

Petitioner is not required to collect tax on its charges to the client, provided no tangible personal property is transferred to the customer or its designees in connection with this service. All purchases by Petitioner, either for its own account or as agent for a principal, of material or taxable services to be used in performing these services are subject to sales tax. . . .

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Accordingly, pursuant to Section 1105(c) of the Tax Law and Greenstone & Rabasca Advertising Inc., supra, the marketing consultation services provided by Petitioner as set forth above are not subject to sales and use taxes.

It is noted that if the marketing consultation services furnished to its clients cannot be purchased separately from the sale of other taxable services provided by Petitioner, the combination of the items listed must be considered as one, and the entire charge for all items would be subject to sales tax.

DATED: June 18, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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