

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

TSB-A-92 (6)S
Sales Tax
January 31, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911030A

On October 30, 1991, 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 a telephone sales solicitation service to be provided to its clients in New York State will be subject to New York State and local sales and use taxes.

Petitioner, a marketing consulting firm, plans to offer a consulting service whose purpose is to provide the client with high-quality sales leads. These leads will be obtained by the following steps:

1. Consultation with the client regarding its customers, markets, products and services.
2. Development of a script/questionnaire asking for information needed to evaluate how likely a potential buyer is to purchase from the client.
3. Identification of potential buyers from lists provided by the client, published industry directories, articles in trade journals, and referrals from potential buyers.
4. Telephone solicitation, using the approved script, to determine how likely the potential buyer is to purchase from the client. All potential buyers will be told that Petitioner is calling on behalf of the client and that the purpose of the call is sales.
5. Reporting of sales leads (i.e., companies likely to make a purchase) to the client in writing, including all information gained from the telephone call.

All information (i.e., script, sales leads and data on companies contacted that are not likely buyers) will be the property of the client, for the exclusive use of the client, and held in the strictest confidence. This information will be provided on written lead reports. Upon client request, Petitioner will provide its opinion on the client's marketing effort based on the results of the telephone solicitation: for example, identifying the market segments with the greatest demonstrated interest in the client's products or services.

Section 1105(a) of the Tax Law imposes a tax upon "the receipts from every retail sale of tangible personal property".

Section 1105(c)(1) of the Tax Law imposes tax upon:

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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.

The transfer of the written lead reports by Petitioner to its clients will be merely incidental to the service performed by it and will not be a retail sale within the meaning of section 1105(a) of the Tax Law. Accordingly, since the services performed by Petitioner will not come within the provisions of section 1105(a) or 1105(c)(1) of the Tax Law and since no other provision of the Tax Law applies to the telephone sales solicitation service to be provided by Petitioner, the services to be provided by Petitioner, as described above, will not be subject to New York State sales or use tax. It is noted that even in the instant case if it is deemed that Petitioner will be conducting an information service described in Section 1105(c)(1) of the Tax Law, such service will be exempt from sales and use taxes since the information provided to its customers will be personal or individual in nature.

DATED: January 31, 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.