

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

TSB-A-96 (55)S
Sales Tax
September 18, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S941110A

On November 10, 1994, a Petition for Advisory Opinion was received from Gormley & Partners, One Fawcett Place, 3rd Floor, Greenwich, CT 06830.

The issue raised by Petitioner, Gormley & Partners, is whether the sale of its business analysis service is subject to sales tax.

Petitioner makes the following statement of facts.

Petitioner provides a business analysis service, i.e., it analyzes existing or potential markets for its clients' products or services. Petitioner specializes in market positioning and new product or service development. Usually, clients' products are stagnating or initial results from their launch are disappointing.

At the time that Petitioner is retained, Petitioner and its client enter into a confidentiality agreement under which Petitioner is prohibited from using any information it obtains from the client for any purpose other than the services it is to provide. The services are unique to the particular client, who requests Petitioner to assist in resolving a problem by creating a new approach to selling (marketing) the goods or services. Petitioner is also prohibited, pursuant to the confidentiality agreement, from providing services to any competitor of Petitioner's client.

Substantially all of the information that Petitioner uses in providing services is provided by the client, although, from time to time, Petitioner will use outside services to refine ideas and concepts. Upon conclusion of its research, Petitioner will make a presentation to the client and, if needed or required, will provide a written summary of the marketing ideas created, presentation boards, advertising ideas and appropriate imagery. Any "art work" used in the presentation is billed separately to the client. Also, where required, the recommendations and concepts are reviewed directly with the client's advertising or marketing agency. Petitioner is not, however, an advertising or marketing service agency.

Section 1105(c) of the Tax Law imposes a tax upon the receipts from every sale, except for resale, of certain enumerated services. The service of providing a business analysis service as described by Petitioner is not one of the services enumerated under section 1105(c) of the Tax Law and, therefore, is not subject to sales or use tax.

Material purchased by Petitioner for the purpose of creating presentation boards and turned over to the client subsequent to use, without charge, is not considered to be sold to the client. No sales tax is due on the transfer of this material to the client. However, if Petitioner sells tangible

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personal property, such as art work, together with its business analysis service for a single charge, it must collect sales tax upon the entire amount of the charge. See Greenstone & Rabasca Advertising Inc., Adv Op Comm T&F, September 9, 1986, TSB-A-86(35)S. If the art work is billed separately from the charge for the service, and the separate charge for the art work is reasonably related to its true value, sales tax is only due on the charge for the art work.

It should be noted that if Petitioner's business analysis services furnished to its client cannot be purchased separately from the sale of other taxable services or artwork provided by Petitioner, the combination of the items must be considered as one, and the entire charge for all items would be subject to sales tax. See Morton L. Coren. P.C., Adv Op Comm T&F, June 29, 1990, TSB-A-90(33)S.

DATED: September 18, 1996

/s/
JOHN W. BARTLETT
Deputy Director
Technical Services Bureau

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