

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

TSB-A-91 (29)S
Sales Tax
March 18, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S901129A

On November 29, 1990, a Petition for Advisory Opinion was received from One Call Systems, Inc., Three Allegheny Center, Pittsburgh, PA 15212.

The issue raised by Petitioner, One Call Systems, Inc., is whether the providing of a toll-free 800 telephone answering service for One Call User's Council, Inc. is subject to New York State and local sales and use tax.

Petitioner operates a call center in New York City whereby contractors, utilities, and the general public may call its toll-free 800 telephone answering service number to report their intent to disturb the earth. This message is transmitted by the Petitioner to the member utilities who have underground facilities located in the area of the dig. The utilities then inform the caller of underground line locations based on the utilities research maps and records of facilities. The utilities may also stake out the location of underground lines prior to the dig. The telephone answering service is funded and otherwise maintained by One Call User's Council, Inc., a not-for-profit corporation owned by member utility companies. The purpose of the service is to prevent damage to underground utilities and harm to the public and property from excavating in areas where underground facilities are located.

Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services. The providing of a telephone answering service 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.

Section 1105(c)(9) of the Tax Law, effective September 1, 1990, imposes tax upon the receipts received from the following:

The furnishing or provision of an entertainment service or of an information service, which is furnished, provided, or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature, such as entertainment or information services provided through 800 or 900 numbers of mass announcement services or interactive information network services. Provided, however, that in no event (i) shall the furnishing or provision of an information service be taxed under this paragraph unless it would otherwise be subject to taxation under paragraph one of this subdivision if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner nor (ii) shall the provision of cable television service to customers be taxed under this paragraph. (emphasis added)

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The type of service provided by Petitioner to the member utility companies is similar to a telephone answering service which is not an enumerated service subject to sales or use tax under Section 1105(c) of the Tax Law. Further, Petitioner is not providing an information service subject to sales or use tax pursuant to Section 1105(c)(9) of the Tax Law since it does not provide callers with any information, but merely transmits messages to the utility companies of the caller's intent to dig. Therefore the receipts received by Petitioner from One Call User's Council, Inc. are not subject to the imposition of State and local sales and use tax.

DATED: March 18, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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