

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

TSB-A-94 (42)S  
Sales Tax  
September 16, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940601D

On June 1, 1994, a Petition for Advisory Opinion was received from Tracye Ogle McElveen, 119 Talcott Street, Owego, New York 13827.

The issues raised by Petitioner, Tracye Ogle McElveen, are:

1. Whether the service of recruiting temporary employees through interviews and evaluations is subject to sales and use taxes.
2. Whether the development of temporary employee training programs and materials is subject to sales and use taxes.
3. Whether the rewriting of process and inspection sheets to a fourth to sixth grade reading level of understanding is subject to sales and use taxes.

Petitioner recruits temporary employees through interviews and evaluations for her client. This is done by candidates submitting employment applications to the client company. Candidates then take a written skills test developed by the client company. Personal and individual interviews are conducted by the Petitioner with the candidates. When Petitioner feels a candidate has satisfactorily answered the interview questions, a color awareness test, developed by the client company is administered. If the candidate passes all the components of the hiring process, a recommendation of employment is made to the client company.

Petitioner also drafts manuscripts of training materials to be used by its client company. Petitioner is accountable to client company's Core Training Team ("CTT") which consists of the Human Resources Manager, Quality Assurance Manager and Industrial Engineering Manager who review such materials for the required content. Petitioner serves as a training expert to ensure that materials are academically sound and revises materials to agree with the consensus of the CTT.

Petitioner only supplies one copy of the draft manuscript to the client company. The final product (training materials) is a joint effort of the CTT. The client uses its computers, copiers, etc. to produce the final product. The training materials are labeled with the company's name. Petitioner is not referenced in any of the documents as an author or a contributor to the training materials.

The training materials are the intellectual and personal property of the client company. The material is a resource to help keep the client company's effort focused on the project and to facilitate the day-to-day administrative tasks associated with executing the project.

Petitioner is also responsible for the rewriting of process and inspection procedure sheets. Petitioner works with manufacturing engineers and technicians to ensure that their process sheets and inspection procedure sheets are written to a fourth to sixth grade level of understanding. Petitioner's responsibilities include reviewing existing process and inspection sheets; making recommendations to simplify the sheets and increase reader understanding; and train engineers and technicians to apply elementary writing principles to their work. The revised process and inspection sheets are the intellectual and personal property of the client company, and the company is responsible for doing any printing or copying of such sheets.

Section 1105(c) of the Tax Law imposes sales tax upon the receipts from every sale, except for resale, of certain enumerated services. The providing by Petitioner of a referral service recommending temporary employees for employment is not one of the services enumerated under Section 1105(c) of the Tax Law and, therefore, such service is not subject to sales tax.

In Alan/Anthony, Inc., Adv Op Comm T&F, April 6, 1992, TSB-A-92(32)S, the petitioner received from its client copies of the proceedings from the annual conference held by its client. From the proceeding, Petitioner wrote a one-page abstract summarizing the contents of each speech or paper presented at the conference. The Commissioner opined that the receipts from writing abstracts summarizing the content of presentations and speeches given at its client's annual conferences were not subject to sales and use taxes since such abstract constituted a manuscript and, as such, was considered intangible personal property.

In Alan/Anthony, Inc., Adv Op Comm T&F, May 27, 1992, TSB-A-92(42)S, the petitioner provided a writing and editorial service in connection with the publication of an annual membership directory. The service provided by Petitioner included the writing of member listings based on information provided by the client, submission of manuscripts to the client's graphic department, proofreading and copy editing of the typeset pages before submission of the manuscripts to the client for approval. All typesetting and page layout was performed by the graphics department and the cost thereof paid directly by the client. The Commissioner opined that the manuscript and editorial services performed in connection therewith were not subject to sales and use taxes, provided such services could be purchased separately from other taxable services performed by Petitioner.

Accordingly, with respect to issue "1", the providing by Petitioner of a referral service recommending temporary employees for employment is not one of the services enumerated under Section 1105(c) of the Tax Law. Therefore, such service is not subject to sales and use taxes.

Concerning issues "2" and "3", Petitioner drafts manuscripts of training materials to be used by its client company, as well as, serves as a training expert to ensure that the materials are academically sound and revise materials to agree with the consensus of the CTT. In addition, Petitioner works with manufacturing engineers and technicians of its client's company to ensure that

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their process sheets and inspection procedure sheets are written to a fourth to sixth grade level of understanding. Pursuant to the two Alan/Anthony, Inc., opinions supra, the writing of manuscripts summarizing the content of material provided by the client and the proofreading and editing of material provided by the client are not services subject to sales and use taxes. Therefore, since Petitioner is merely writing manuscripts of training material and editing process sheets and inspection sheets to a level of understanding for its client company's use, such services are not subject to sales and use taxes.

DATED: September 16, 1994

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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