

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

TSB-A-90 (10)S
Sales Tax
March 14, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891109A

On November 9, 1989 a Petition for Advisory Opinion was received from Paul R. Comeau, Esq., c/o Hodgson, Russ, Andrews, Woods & Goodyear, 1800 One M & T Plaza, Buffalo, New York 14203-2391.

The issue raised by Petitioner, Paul R. Comeau, Esq., is whether receipts from the sale of certain research services are subject to or exempt from the sales tax imposed under Articles 28 and 29 of the Tax Law.

Advertising agencies perform or purchase research services for their own use or for the use of their clients. These research services may be called "focus groups", although they are also known as tracking studies, attitude and usage studies, copy research, and concept research. In each instance, a researcher conducts interviews by mail, telephone, door-to-door or at a central location such as a shopping mall. Usually, the interviewer intercepts people (by calling their homes, knocking on their doors, stopping them in a shopping mall, and so forth) and asks specific questions about a product, an advertising campaign, the overall market, the text or content of an advertisement, or general attitudes concerning various concepts which might appear in advertisements. Sometimes advertising agencies conduct the research with their own personnel, and other times they hire outside contractors. The results of the research are collected and reports are prepared. The reports are either furnished to the advertising agencies' customers or used by the advertising agencies to develop or modify promotional campaigns (which may include television or radio commercials, print advertising, product packaging, product development, and so forth).

The reports in question are not derived in whole or in part from common data bases. Each oral or written report is prepared individually from the ground up using information collected during the interview stage. The collected information does not become part of a common data base. Information contained in a report is highly confidential, proprietary material for the exclusive use of the purchaser of the report. The advertising agencies performing these services cannot sell this information to others or use this information to service other clients.

The specific services rendered may be categorized and described as follows:

FOCUS GROUPS. Generally, a focus group is a discussion/interview with one or more people in a given location. Sometimes an outside research supplier is hired to conduct focus groups and sometimes they are done in-house by the advertising agency. The focus group is generally related to a particular category of product or a client's brand.

TRACKING STUDIES. A tracking study is a research procedure used to measure the degree to which an advertising campaign achieves clearly defined objectives. Because it is implemented to track the effects of a particular advertising campaign on a particular brand, the information obtained is highly customized to a client's needs.

An outside research supplier is hired to conduct the study. It may use any one of many interviewing procedures. Generally, these could include any of the following procedures:

1. Telephone interviews. Interviewers in a WATS facility call a random sample of the target group around the country (or in a specified area if the advertising is regional).
2. Door-to-door interviews. The supplier will usually sub-contract different field services around the country to interview people by going door to door (this could also take place regionally).
3. Central location interviewing. Generally this involves mall interviews. Again, different field services in different cities are subcontracted to conduct a certain number of interviews by intercepting people in malls, screening them to make sure they belong to the target group, and then interviewing them.

The results of a tracking study are generally submitted to the client in report form. However, it is possible to receive results orally.

ATTITUDE AND USAGE STUDIES. Attitude and usage studies are designed to analyze consumers' attitudes towards--and use of--a particular brand within a particular category. While the main focus of the study will be on a client's brand, questions will also be included on competitive brands in order to understand the overall market. However, each study is customized to a particular client's needs.

An outside research supplier is hired to conduct the study. The methods of interviewing are the same as those used in the tracking studies mentioned above.

COPY RESEARCH. Copy research is also generally conducted by an outside research supplier. The interview methodology is the same as that used for tracking studies with the "mall intercept" being the most widely used method for copy research. Copy research involves obtaining information about an advertisement or a group of advertisements. The client may have three or four campaigns running on the same brand and they want to know which one is the most persuasive. Generally, people are shown one or more commercials and then asked to respond to questions about the commercial(s).

CONCEPT RESEARCH/QUANTITATIVE. The purpose of this type of research is to evaluate the size of market opportunity for a new product, to measure the appeal of various versions of a new concept or several concepts, or to determine what target group was most interested in the concept. This type of research is similar to tracking studies in that the same interview methodology is used. The only difference is that the questions pertain to a client's concept rather than a client's brand.

The usual first step in research of this kind is exposing the concept to respondents. The concept may take a variety of forms, from a "white card" containing a brief, typed description to a script with illustrations or an "ad-like object" on a storyboard or videotape.

Following exposure to the concept, respondents will answer a series of questions about the product they saw or read about. The content and order of the questions depends upon the objective of the test. Common objectives include:

1. Gauging the appeal of a genuinely new product -- one that would require the consumer to change his/her attitude or behavior in the general category.
2. Testing how well variations (e.g., formulation, fragrance, packaging) of a new or existing product fulfill consumer expectations that the concept evokes.
3. Measuring the relative appeal of different positionings of a product.

Some tests include a demonstration or a home usage trial period, others are limited to exposure to the concept alone.

CONCEPT RESEARCH/QUALITATIVE. This research method is used to explore the appeal and/or the best communication approach for a new product. In-depth interviews are conducted among consumers to gain insight on issues that apply directly to the concept or product under consideration. The interviews can be conducted individually or in groups.

Section 1105(c) of the Tax Law imposes tax upon...[t]he receipts from every sale, except for resale of the following services:

- (1) 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

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be substantially incorporated in reports furnished to other persons....

Section 527.3(a)(2) of the Sales and Use Tax Regulations defines an information service as "[t]he collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons...".

Accordingly, since the advertising agencies or the outside contractors collect, compile or analyze information and furnish reports thereof to other persons, the advertising agencies and the outside contractors are considered to be performing and providing information services.

Inasmuch as the research reports furnished to clients by the advertising agencies or outside contractors are prepared by using only the information collected for a particular client during interviews conducted to obtain specific data for use in providing information to such client, the information contained in the reports furnished to the client meets the statutory test of being personal or individual in nature. Additionally, because the information collected during the interview is not derived in whole or in part from common data bases nor may be entered into a common data base, and is not or may not be sold to others or used to service other clients, the statutory test that the information furnished is not or may not be substantially incorporated in reports furnished to other persons is also met.

Accordingly, the research services as heretofore described provided by the advertising agencies or outside contractors are not subject to the tax imposed under Section 1105(c)(1) of the Tax Law but fall within the exclusion from tax provided by such section in that they are personal or individual in nature and are not or may not be substantially incorporated in reports furnished to others.

DATED: March 14, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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