

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

TSB-A-92 (5)S  
Sales Tax  
January 30, 1992

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S901204C

On December 4, 1990 a Petition for Advisory Opinion was received from SEI, 680 East Swedesford Road, Wayne, PA 19087-1658.

The issue raised is whether Petitioner, SEI's consulting services, including the furnishing of information and written reports which Petitioner provides to sponsors of tax exempt benefit plans and to money managers constitute information services of the type which are excluded from tax under the provisions of Section 1105(c)(1) of the Tax Law.

Petitioner provides consulting services through its Evaluation Services Division to sponsors of tax exempt benefit plans (plan sponsors) and to money managers located in New York and other states. Plan sponsors use Petitioner's individualized services to monitor the investment performance of the benefit plans under their control, and money managers use Petitioner's evaluation services to monitor the investment performance of their client accounts. All of Petitioner's informational services regarding a client are confidential and are not disclosed to other clients or otherwise made public.

Petitioner's approach to plan management includes four steps. First, Petitioner studies the client's organization, benefit plans under management, investment policy and activities. Second, Petitioner identifies areas in need of improvement and develops a strategic plan for that specific client. Third, Petitioner assists the client in implementing the strategic plan. Fourth, Petitioner provides regular, ongoing investment advisory services including quarterly and annual investment performance analytics.

All of the following consulting services are provided to plan sponsor, however, money managers require only some of these services:

1. Investment Policy Planning
2. Asset Allocation
3. Investment Manager Search
4. Investment Performance Analysis
5. Trading Cost Analysis
6. Custodial Master Trustee Audit

1. Investment Policy Planning

Through Investment Policy Planning, Petitioner provides objective analysis of the goals, risk tolerance, and needs of an individual plan to help a plan sponsor determine the best course of action for assets under his or her control. This process considers policy alternatives and their consequences on the liabilities of the plan. Using this individualized information, a client is able to examine the impact of alternative asset mixes on plan funding status, likely contributions, expense levels, and

other important variables. This linking of investment performance to specific plan liabilities provides insight to the plan sponsor necessary to establish and review suitable investment policies.

The establishment of an appropriate investment policy involves setting suitable risk and diversification levels for assets of a particular plan. Investment policy prescribes an acceptable course or management for the holdings and assets of the plan and considers both the accruing liabilities of the plan and the risks of the capital markets.

The Investment Policy Planning process performed by Petitioner for a client involves:

- 1) Projecting the financial requirements of the plan by working with the client and the client's actuary to develop estimates of accruing liabilities and experience assumptions;
- 2) Using this forecast to establish plan objectives for funding liabilities and controlling contributions over time; and
- 3) Formulating an appropriate investment policy for each plan by examining the likelihood of achieving the plan's particular objectives with alternative asset mixes. The resulting statement of investment policy establishes ranges of risks permissible in terms of maximum commitment to asset classes and includes guidelines for suitable equity and fixed-income investment for the plan being analyzed.

Because the Investment Policy Planning service provided by Petitioner is designed around a client's specific financial requirements and objectives, all of which are confidential, the information cannot be substantially incorporated in reports furnished to other persons.

## 2. Asset Allocation

The Asset Allocation consulting conducted by Petitioner is intended to define the degree of diversification desired by a client for both its classes of assets and its particular types of managers. Petitioner works with a client to ensure that the assets held in its plan are well diversified. Petitioner will determine and recommend to the client the most efficient portfolio for its particular purposes, in terms of desired return and standard deviation parameters, consistent with acceptable asset alternatives. In addition, Petitioner will conduct a risk tolerance test and present to the client the hypothetical performance results of investment policies for its plan, ranging from very conservative to very aggressive. The resulting report is customized and confidential.

The Asset Allocation service is designed for a particular client based upon the assets held by the client and the diversification desired, and therefore, the information developed cannot be substantially incorporated into reports furnished to other persons. For example, the risk tolerance test

conducted for a client is performed using that client's portfolio and investment policies and would not be acceptable to other plan sponsors. Each risk tolerance test is unique to a particular client.

### 3. Investment Manager Search

Plan sponsors use Petitioner's Manager Search services in order to select the most appropriate money managers to handle their particular investments. The manager search process is unique, methodical and disciplined, to ensure that the final selection reflects an informed decision.

Petitioner monitors the quantitative and qualitative aspects of over 1,000 investment firms and meets with these managers to obtain the latest information on their organizations, investment process, philosophy, and performance. Using this background information, Petitioner works closely with a client to develop the plan's criteria, and then helps the client to narrow the field of potential candidates by preparing detailed profiles of selected organizations. After assisting in structuring and conducting interview meetings, Petitioner's professionals provide input into the client's final decision.

The Investment Manager Search process involves the following steps:

- 1) Petitioner's consultants meet with the client to develop criteria for the selection of potential candidates;
- 2) Petitioner's due diligence committee identifies suitable candidates;
- 3) Petitioner's analysts develop profiles and performance histories on managers best qualified to meet client criteria;
- 4) Petitioner's consultants meet with the client committee to review candidates and narrow the field of managers to be interviewed;
- 5) The client analyzes recommended managers and with Petitioner's assistance selects the most appropriate candidates for a personal interview and presentation;
- 6) Petitioner contacts the managers and establishes a presentation schedule; and
- 7) Petitioner attends interviews and helps the client make final selection decisions.

The Investment Manager Search process is unique to a particular client and his or her operation and needs. Confidentiality, personalities and a prospective manager's interaction with the plan sponsor restrict the carryover of information that could be substantially incorporated in reports furnished to other persons.

#### 4. Investment Performance Analysis

Through these consulting services, Petitioner provides detailed information on all major asset categories of a client's fund, as well as on the activity and performance of the investment manager of that particular fund. Based on monthly asset and transaction statements received from the client's custodian, Petitioner produces quarterly investment performance reports that analyze all components of overall portfolio results, including the evaluation of all major asset classes. Complete rate-of-return and relative performance evaluation information is provided so that the client can effectively monitor the funds under its control. Petitioner measures both time-weighted and dollar-weighted returns for all asset classes for periods ranging in length from one quarter to ten years. Risk for domestic equities is measured in terms of point-in-time and historical betas as well as standard deviations of quarterly returns. Risk for domestic bonds, international bonds, equities, and real estate is measured in terms of the standard deviation of quarterly returns. Quarterly reports display the risk/return profile of each class.

Considering the plan sponsor's specific objectives and policy constraints, Petitioner uses equity, bond, and balanced fund backgrounds to provide relative performance measurements. Petitioner's consultants use the confidential results of the fund performance analysis as a diagnostic tool to provide investment advice to the client. These professionals analyze and interpret the resultant information and present the findings to the client. Besides answering specific questions, Petitioner makes recommendations to improve the performance of the client's particular plan.

As with other consulting services performed by Petitioner, the Investment Performance Analysis is based upon the holdings and transactions of a client's particular fund and the customized, confidential information provided to that client regarding the fund's performance is not and may not be substantially incorporated into reports furnished to other clients. For instance, a quarterly investment report is prepared using information from the client's portfolio and has no carryover to another person with a different portfolio. Obviously, the rate-of-returns and relative performance of each portfolio for each client must differ because the assets and asset classes themselves differ.

#### 5. Trading Cost Analysis

The Trading Cost Analysis service is used to measure all the costs associated with trading equities, including commission costs and execution or market impact costs, relative to a client's plan. Petitioner reviews each securities transaction in the client's equity portfolio, calculates total commissions and execution costs and evaluates results against those of other portfolios. Petitioner also reviews the manager's use of brokers to ensure that the right types of brokers are being used for different types of equity transactions.

The preparation of a Trading Cost Analysis is not unlike the preparation of accounting information for a financial institution. These types of services are uniquely personal to a client and the confidential data developed is not and may not be substantially incorporated in reports furnished to others.

#### 6. Custodial Master Trustee Audit

Through its Custodial Master Trustee Audit service Petitioner is able to monitor a wide range of custodian activities and report exceptions to the trustees of a trust fund. The reports allow the trustees to monitor trade executions, income receipts, and cash management by the custodian, and help to ensure that the trust's assets are correctly reflected in its record.

Petitioner examines all assets of the fund and all transactions that took place during the quarter, and compares the results with the bank's trust statements. Specific discrepancies on trust documents are listed with a brief statement of each discrepancy's probable cause and estimated dollar impact to the fund. The service also summarizes the fund's daily cash balance during the quarter and estimates the interest that would have been earned if all daily cash balances over \$1,000 had been invested at the average monthly Treasury bill rate.

The Custodial Master Trustee Audit service is similar in many respects to Petitioner's Trading Cost Analysis service in that both review and analyze transactions, assets, costs, etc., and result in preparation of a confidential report for the client that is unique to that client's pension fund or trust fund. In both situations, there is no carryover of information compiled or prepared for one client that can be substantially incorporated into a report prepared for another client.

The sources of information used by Petitioner in performing Investment Policy Planning analysis, Asset Allocation analysis, Trading Cost Analysis, and the Custodial Master Trustee Audit and in preparing the reports resulting from such services are derived from the client's actuary, the specific client's current plan asset allocation, and monthly asset and transaction statements received from the client's customer or investment manager.

The sources of information for the Investment Performance Analysis are monthly asset and transaction statements received from the client's custodian or investment manager, and also from third parties (Compustat, IDSI, Moody's Financial and Fitch).

Clients must purchase Petitioner's evaluation services for each separate portfolio that Petitioner manages. For example, a client with two or three equity portfolios being separately managed by investment advisors would sign up for Petitioner's evaluation service for each portfolio. An additional fee for Petitioner's evaluation services is required for each portfolio. If a client signs up for Petitioner's evaluation service with respect to only one portfolio, the reports and the evaluation services it receives would only relate to that portfolio and would not apply to other portfolios of the client. Thus, Petitioner's evaluation service is customized to a specific portfolio of a particular client and does not result in a generic report on industry trends.

Section 1105 of the Tax Law states, in part

Imposition of sales tax.--. . .there is hereby imposed and there shall be paid a tax. .  
.upon

(c) The 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 be substantially incorporated in reports furnished to other persons. . .

Section 527.3 of the Sales and Use Tax Regulations states, in part:

Sale of information services.--(Tax Law. Sec. 1105(c)(1). (a) Imposition. (1) Section 1105(c)(1) of the Tax Law imposes a tax on the receipts from the service of furnishing information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any manner such as by tapes, discs, electronic readouts or displays.

(2) The collecting, compiling or analyzing information of any kind or nature and the furnishing reports thereof to other persons is an information service.

. . .

(b) Exclusions. (1) Sales tax does not apply to receipts of information services which are for resale as such.

(2) The sales tax does not apply to the receipts from the sale of information which is personal or individual in nature and which is not or may not be substantially incorporated into reports furnished to other persons by the person who has collected, compiled or analyzed such information.

Example 3: A computer service company has a program consisting of withholding tax tables. Using the same program, it computes the payroll for several subscribers. The fee charged to each subscriber is not taxable as it is for an information service, the results of which are not incorporated into reports furnished others.

The reports furnished by Petitioner present information relating to securities transactions and position and are designed to allow plan sponsors to monitor the investment performances of benefit plans under their control and to allow money managers to monitor the investment performance of

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their client accounts. The report relating to an individual account is unique because it is based on particular holdings in that account. Petitioner holds such reports in confidence and takes measures to insure that the information pertaining to an individual account is not disclosed to other clients.

Therefore, Petitioner's receipts from charges for the reports which result from Petitioner's Investment Policy Planning analysis, Asset Allocation analysis, Investment Performance Analysis, Trading Cost Analysis and the Custodial Master Trustee Audit are considered to fall within the exclusion from tax under the provisions of Section 1105(c)(1) of the Tax Law and Section 527.3 of the Sales and Use Tax Regulations.

Petitioner's Investment Manager Search service is considered to be a consulting service and the receipts from the service, which is not one of the taxable services enumerated under Section 1105 of the Tax Law, are not subject to state or local sales tax. Where this service results in Petitioner furnishing the client with a written report, the information contained in the report will be considered personal and individual in nature and as such information will not be incorporated in reports furnished to other persons the receipts from the charges for this service will also be excluded from tax under the provisions of Section 1105(c)(1) of the Tax Law and Section 527.3 of the Sales and Use Tax Regulations.

DATED: January 30, 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.