

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(33)S
Sales Tax
September 7, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000407A

On April 7, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Herbert K. Guenther, 54 Grandview Avenue, Buffalo, New York 14223.

The issue raised by Petitioner, Herbert K. Guenther, is whether a rendering service provided by a licensed professional architect is subject to State and local sales and use taxes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a licensed architect and owns and operates an architectural computer modeling, rendering and animation business. Petitioner's clients consist of developers, owners of buildings that need renovation, architects and engineers. Petitioner's clients come to him during preliminary phases of project development. Petitioner produces renderings for their concepts regarding renovation or building design. During this rendering process Petitioner offers design assistance regarding building form, color and material selection.

Applicable Law & Regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. . . .

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), conditional or otherwise, in any

manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

(6) Tangible personal property. Corporeal personal property of any nature. . . .

Section 1105 of the Tax Law states, in part:

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

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(7) Interior decorating and designing services, (whether or not in conjunction with the sale of tangible personal property), by whomsoever performed, including interior decorators and designers, architects or engineers; notwithstanding the forgoing, such services shall not include services which consist of the practice of architecture, as defined in section seventy-three hundred one of the education law, or the practice of engineering, as defined in section seventy-two hundred one of the education law, if the services are performed by an architect or engineer having a license or permit under the education law.

Section 7301 of the Education Law defines the practice of architecture as follows:

The practice of the profession of architecture is defined as rendering or offering to render services which require the application of the art, science, and aesthetics of design and construction of buildings, groups of buildings, including their components and appurtenances and the spaces around them wherein the safeguarding of life, health, property, and public welfare is concerned. Such services include, but are not limited to consultation, evaluation, planning, the provision of preliminary studies, designs, construction documents, construction management, and the administration of construction contracts.

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Section 526.8(a) of the Sales and Use Tax Regulations provides, in part:

. . . The term *tangible personal property* means corporeal personal property of any nature having a material existence and perceptibility to the human senses. Tangible personal property includes, without limitation:

* * *

(3) artistic items, such as sketches, paintings, photographs, moving picture films and recordings. . . .

Opinion

Petitioner produces renderings of its clients' concepts regarding renovation or new building design. Petitioner may also provide design assistance regarding building form, color and material selection.

Sketches and drawings, as well as architectural models, are tangible personal property and may, therefore, be subject to sales tax. See Leslie H. Barker, Adv Op Comm T&F, June 23, 1994, TSB-A-94(26)S; Awad Architectural Models, Adv Op St Tx Comm., February 14, 1986, TSB-A-86(9)S. Renderings that are copyrighted and transferred by the renderer to its client pursuant to a "right to reproduce," may not be subject to sales tax. See New York Society of Renderers, Adv Op Comm T&F, July 1, 1998, TSB-A-98(43)S.

If a licensed architect transfers a rendering along with design plans or design services for which a license to practice architecture under the State Education Law is required, the rendering is considered incidental to the architectural service and is not subject to sales tax. Although the production of a rendering may require a great deal of skill, it does not necessarily constitute a service for which a license to practice architecture is required. Thus, the production and sale of a rendering for which a license under the State Education Law is not required is the sale of tangible personal property which is subject to tax under Section 1105(a) of the Tax Law.

DATED: September 7, 2000

/s/
John W. Bartlett
Deputy Director
Technical Services Division

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