

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-12(23)S
Sales Tax
September 20, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO S120127A

Petitioner, [REDACTED], asks whether receipts from sales of design images delivered electronically to its customers are subject to sales tax. We conclude that the receipts from the sales of electronically delivered drawings are not subject to sales tax.

Facts

Petitioner creates electronic images for submission to the United States Patent Office as part of a patent application, for courtroom presentations during trials and hearings, and for presentation at mediation and arbitrations. Petitioner delivers the drawings electronically as PDF files attached to emails.

Analysis

The Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property, except as specifically exempted or excluded. *See* Tax Law § 1105(a); 20 NYCRR § 526.6(a). A retail sale is defined as a sale of tangible personal property to any person for any purpose.... *See* Tax Law § 1101(b)(4)(i). Tangible personal property is defined as corporeal personal property of any nature having a material existence and perceptibility to the human senses. It includes artistic items, such as sketches, paintings, photographs, moving picture films, and recordings. *See* Tax Law § 1101(b)(6); 20 NYCRR § 526.8(a).

In a previous opinion regarding patent drawings (TSB-A-97(48)S), the facts presented were similar to some of the facts in this petition regarding submissions to the United States Patent Office, except that the drawings were delivered to Petitioner's customers by mail as paper-print outs, and not electronically as PDF files. The prior opinion held that Petitioner's formal drawings to its customers constituted tangible personal property and receipts from Petitioner's sale of the drawings were subject to sales tax.

In this opinion, Petitioner furnishes all the drawings to its customers by electronic means as PDF files. Therefore it must be determined if the electronic drawings delivered to Petitioner's customers are tangible personal property within the meaning of the Tax Law section 1101(b)(6). Where drawings are delivered solely electronically with no tangible format, the receipts from the sales of those drawings are not receipts from the sale of

corporeal personal property. *See* TSB-A-09(20)S. Therefore, the receipts are not from the sale of tangible personal property and are not subject to sales tax.

DATED: September 20, 2012

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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