

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

TSB-A-98(35)S  
Sales Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S971231A

On December 31, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Michael Grossman, 295 Madison Avenue, Room 804, New York, New York, 10017.

The issue raised by Petitioner, Michael Grossman, is whether the service of designing interior space in commercial retail establishments is subject to sales and compensating use tax or exempt as an advertising service.

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

Petitioner's client is in the business of designing interior space in commercial retail establishments, almost exclusively banks. The client is not a licensed architect under the New York State Education Law. The end product of the design is intended mainly to attract customers into using the various services of the bank (i.e. investment, charge card, trust services, etc.) and make the overall bank interior user friendly.

Applicable Law and Regulations

Section 1105(c) of the Tax Law imposes a tax on the following:

The receipts of 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 foregoing, 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 527.3(b) (5) of the Sales and Use Tax Regulations provides, in part:

Fees for the services of advertising agencies or other persons acting in a representative capacity are excluded from the tax. Advertising services consist of consultation and development of advertising campaigns, and placement of advertisements with the media without the transfer of tangible personal property....

Opinion

Petitioner's client provides design services to commercial retail establishments. The end result of the services provided is a more user friendly interior designed to attract customers into using various services of the bank, such as investment, charge card and trust services.

Interior decorating and design services are specifically enumerated services subject to sales tax under Section 1105(c)(7) of the Tax Law. These services do not include services which consist of the practice of architecture or engineering by a person licensed to practice architecture or engineering under the Education Law. Petitioner's client is not licensed to practice architecture under the Education Law. There is no suggestion that the services involve engineering or that Petitioner's client is licensed to practice engineering. Therefore, Petitioner's client's design services are taxable interior decorating and design services under Section 1105 of the Tax Law.

Section 527.3(b)(5) of the Sales and Use Tax Regulations states that advertising services consist of consultation and development of advertising campaigns and placement of advertising with the media without the transfer of tangible personal property. The service of designing interiors of commercial retail establishments does not come within this definition. The fact that the interior space may be used to display materials of an advertising nature does not change the service from a design service to an advertising service. Therefore, the fees received by Petitioner's client would not be considered fees for the services of advertising, but rather fees for interior decorating and design services.

Chapters 297 and 298 of the Laws of 1995 amended Articles 28 and 29 of the Tax Law and the Administrative Code of New York City to repeal the 4 percent sales and compensating use tax imposed by New York City on interior decorating and design services. As a result, interior decorating and design services delivered in New York City are subject to tax at the rate of 4 and 1/4% (the 4% statewide tax and the 1/4% Metropolitan Commuter Transportation District (MCTD) tax imposed by Section 1109 of the Tax Law). Any services delivered within New York State but outside New York City will be subject to the 4% statewide sales and use tax and the applicable local sales and use tax rate in effect in the jurisdiction where the services are delivered (including the 1/4% MCTD tax where applicable). Any services delivered by Petitioner's client outside New York State will be exempt from sales and compensating use tax.

DATED: May 19, 1998

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

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