

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

TSB-H-81(69)S  
Sales Tax  
April 3, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810113A

On January 13, 1981 a Petition for Advisory Opinion was received from Mr. James Linnehan, d/b/a James Frames, 7 Irma Avenue, Port Washington, New York.

Petitioner inquires as to whether sales tax should be collected on the charge for delivery of paintings and works of art within New York.

Petitioner is in the business of framing works of art. Petitioner states that incidental to the framing of works of art is the delivery of same. The delivery charge is substantially greater than a normal delivery charge, due to the precautions and extreme care that must be used in delivery.

Section 1105(a) of the Tax Law imposes a tax on the "...receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Section 1101(b)(3) of the Tax Law defines the term "receipt," in relevant part, as "The amount of the sale price of any property...but excluding the cost of transportation of tangible personal property sold at retail where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser."

The Sales and Use Tax Regulations provide that in order to qualify for this exclusion from the definition of taxable receipts "...transportation charges must be reasonable in relation to prevailing established rates. The bureau may establish reasonable charges for an industry, and reduce the exclusion for excessive transportation charges." 20 NYCRR 526.5(g)(4).

Inasmuch as no such "reasonable charges" have been established, pursuant to 20 NYCRR 526.5(g)(4), with respect to the business in which Petitioner is engaged, Petitioner may separately state any transportation charge which is both accurate and reasonable. Such separately stated transportation charge will not be subject to the sales tax.

DATED: March 18, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau