

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

TSB-A-03(35)S
Sales Tax
September 3, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020809B

On August 9, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from Landmark Event Services, Inc., 8 Francis Pl., Caldwell, NJ 07006.

The issues raised by Petitioner, Landmark Event Services, Inc., are:

- (1) Whether services provided as a trade show and special events decorating contractor are subject to sales tax.
- (2) Whether purchases of tangible personal property utilized in providing these services are excluded from sales and compensating use tax as purchases for resale.

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

Petitioner is a trade show and special events decorating contractor. Petitioner provides clients with services including display and set building and design, show production, lighting/sound, sign/graphics, staging, decorating such as floral design and draperies, and other related services. Petitioner provides these services at the following types of events: corporate events, political functions, trade shows, award ceremonies, product introductions, fashion shows and annual meetings. The tangible personal property utilized in providing these services is sold to clients as such or becomes a component of tangible personal property assembled or fabricated by Petitioner to be transferred to the client. Petitioner does not provide its clients with food or food services. On occasion Petitioner rents tables which are provided to the client as part of the set or display.

Applicable Law and 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:

* * *

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article . . . and also including any charges by the vendor to the purchaser for shipping or delivery . . . regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery . . . is provided by such vendor or a third party. . . .

(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. Notwithstanding the preceding provisions of this subparagraph, a sale of any tangible personal property to a contractor, subcontractor or repairman for use or consumption in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, is deemed to be a retail sale regardless of whether the tangible personal property is to be resold as such before it is so used or consumed, except that a sale of a new mobile home to a contractor, subcontractor or repairman who, in such capacity, installs such property is not a retail sale. . . .

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume . . . for a consideration. . . .

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

Section 1105 of the Tax Law imposes sales tax, in part, 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:

* * *

(3) Installing tangible personal property . . . or maintaining, servicing or repairing tangible personal property . . . not held for sale in the regular course of business . . . and whether or not any tangible personal property is transferred in conjunction therewith. . . .

* * *

(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 525.2(a)(3) of the Sales and Use Tax Regulations provides:

Except as specifically provided otherwise, the sales tax is a "destination tax." The point of delivery or point at which possession is transferred by the vendor to the purchaser, or the purchaser's designee, controls both the tax incidence and the tax rate.

Section 526.5 of the Sales and Use Tax Regulations provides, in part:

(a) Definition. The word receipt means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise. The following subdivisions of this section discuss elements of a receipt.

* * *

(e) Expenses. All expenses, including telephone and telegraph and other service charges, incurred by a vendor in making a sale, regardless of their taxable status and regardless of whether they are billed to a customer are not deductible from the receipts.

* * *

(g) Shipping or delivery. (1) Shipping or delivery charges by a vendor to its customer for the cost of transporting tangible personal property to the customer are part of the vendor's receipt subject to tax where the sale of the property is subject to tax or where taxable services were performed on the property. This is so regardless of whether the vendor separately states such charges in a written contract or on an invoice and regardless of whether the vendor ships or delivers the property itself or hires a third party to ship or deliver the property. Similarly, charges by a vendor to its customer for picking up the customer's property upon which the vendor is to perform taxable services are part of the vendor's receipt from the sale of the service subject to tax.

Section 526.7(e) of the Sales and Use Tax Regulations provides:

Transfer of possession. (1) Except as otherwise provided in paragraph (3) of this subdivision, a sale is taxable at the place where the tangible personal property or service is delivered, or the point at which possession is transferred by the vendor to the purchaser or his designee.

Department of Taxation and Finance Notice entitled New York State Sales and Use Tax on Interior Decorating and Design Services, N-90-16, provides, in part:

Beginning June 1, 1990, charges for interior decorating and design services relating to real property located in New York State and any interior decorating and design services delivered into New York State are subject to state and local sales and use tax. . . .

* * *

Persons required to charge and collect sales tax on interior decorating and design services include interior decorators, interior designers, interior consultants, convention or special events decorators, and anyone else who renders such services. Interior decorating and design services include, but are not limited to: the preparation of layout drawings; furniture arranging; design and planning of furniture, fixtures and other furnishing which are not permanently attached to a building or structure; selection, purchase and arrangement of surface coverings, draperies, furniture, furnishings and other decorations; or any similar service. (Emphasis added)

New York City's tax on interior decorating and design services was repealed by Chapters 297 and 298 of the Laws of 1995, effective December 1, 1995. See Technical Services Bureau Memorandum Repeal of New York City's Sales Tax on Interior Decorating and Design Services, December 1, 1995, TSB-M-95(13)S.

Opinion

A variety of services, beginning with design and following through to production, are provided by Petitioner as a trade show and special events decorating contractor. The services vary based on the type of event or trade show. Petitioner is required to provide clients with sets, lighting/sound, signs/graphics, staging, decorating and other related services needed to create a presentation for a successful trade show or event.

Displays, sets, floral designs, or other items which are needed for display or to produce the desired effect of the trade show or event are provided in conjunction with Petitioner's services. The provision of such items by Petitioner to the client is considered to be the sale of tangible personal property subject to New York State and local sales taxes under section 1105(a) of the Tax Law. The various services provided by Petitioner all constitute interior decorating and design services which are subject to New York State and local sales taxes pursuant to section 1105(c)(7) of the Tax Law. See New York State Sales and Use Tax on Interior Decorating and Design Services, N-90-16, *supra*.

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However, decorating and design services delivered in New York City are not subject to the local New York City sales tax. See Repeal of New York City's Sales Tax on Interior Decorating and Design Services, TSB-M-95(13)S, supra.

Therefore, Petitioner's charges for services and tangible personal property are subject to New York State and local sales and use taxes. When these services and property are delivered in New York City the entire charge is subject to New York City sales and use tax unless the interior decorating and design services are contracted for separately from the tangible personal property and the charges for such services are reasonable and separately stated on the customer invoice. See TSBM-95(13)S, supra; and J.P. Molyneux Studio Ltd., Adv Op Comm T & F, May 22, 1996, TSB-A-96(31)S. When separately sold, the services of interior decorating and design delivered in New York City are subject to New York State sales and use tax (including the 1/4% tax imposed on behalf of the Metropolitan Commuter Transportation District), but are not subject to New York City sales and use taxes. The tangible personal property is subject to both New York State and New York City sales and use taxes.

When Petitioner provides services and delivers tangible personal property to a location outside of New York State, the receipts are not subject to New York State or local sales taxes regardless of the customer's business location. See sections 525.2(a)(3) and 526.7(e) of the Sales and Use Tax Regulations.

Petitioner may make exempt purchases of tangible personal property if the property is purchased exclusively for resale as such, or as a physical component part of tangible personal property which will be resold, or exclusively for use in performing a taxable service if such property becomes a component part of the property on which the service is performed or such property is transferred to the client in conjunction with the performance of the service. See section 1101(b)(4)(i) of the Tax Law. Petitioner's purchases of tangible personal property, including rentals of items such as tables, which are transferred to the client or become a component part of tangible personal property transferred to the client are exempt purchases for resale, if the property is purchased exclusively for such purposes. If the items are not transferred to the client and are used by Petitioner, then Petitioner is required to pay sales or use tax on such purchases.

DATED: September 3, 2003

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