

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-08(30)S
Sales Tax
July 21, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S070604A

On June 4, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from Aldo V. Vitagliano, 150 Purchase Street, #9, Rye, New York 10580. Petitioner, Aldo V. Vitagliano, submitted additional information pertaining to the Petition on June 19, 2007.

The issue raised by Petitioner is whether the charges for millwork shop drawing services as described below are subject to sales tax.

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

Petitioner, acting in the capacity of general contractor on several construction projects on properties located in New York City and Westchester County, enters into an agreement with an entity (Company X) located outside New York State for Company X to perform millwork shop drawing services for Petitioner. Millwork shop drawing services relate to the design of custom woodwork; e.g., staircases, moulding, and built-in cabinetry. Company X does not provide architectural services; an architect is on the construction team to provide architectural services. The services will include performing shop drawings with personnel at a location outside of New York State and providing a millwork project manager to attend the site project meeting in New York. At the site project meeting, the millwork project manager will work with the construction team, including architects and designers, to coordinate and prepare the implementation of the construction using the designs from the shop drawings. Petitioner, the project architect, and the project designer review and approve the drawings. After the drawings are approved, Petitioner, through a bid process, selects a contractor to perform the millwork construction services. During the construction period, Company X's millwork project manager will participate in periodic supervision of the millwork at the construction site.

Applicable law and regulations

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

(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 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.

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

Company X performs millwork shop drawings and provides a project manager to supervise the millwork for Petitioner's construction projects in Westchester County and New York City.

Interior decorating and design services are specifically enumerated services subject to sales tax under section 1105(c)(7) of the Tax Law. The service of interior decorating and design does 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. The preparation of millwork shop drawings and the provision of a manager to supervise the installation of such millwork in real property located within this State constitute interior decorating and design service under section 1105(c)(7) of the Tax Law. Company X in the present case is not an

TSB-A-08(30)S
Sales Tax
July 21, 2008

architect. Petitioner does not engage Company X to provide architectural and engineering services. Likewise, Company X is not hired to perform construction or installation of the millwork, services that might qualify as a capital improvement to real property, and, therefore, not be subject to tax pursuant to sections 1105(c) (3) and 1105(c)(5) of the Tax Law. The services performed by Company X 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, provided the millwork is for the interior of the building or structure. See *New York State Sales and Use Tax on Interior Decorating and Design Services*, N-90-16, *supra*. However, interior 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, charges for millwork shop drawing services relating to interior millwork are interior decorating and design services subject to New York State and local sales and use tax. The charges for services of interior decorating and design delivered in New York City are subject to New York State sales and use tax (including the ¼% tax imposed on behalf of the Metropolitan Commuter Transportation District), but are not subject to New York City sales and use taxes.

To the extent that the charge to the customer represents the separate sale of drawings without the inclusion of design services, it would be considered the sale of tangible personal property subject to both State and local sales tax where the property is delivered in New York State (including within New York City). See *New York Society of Renderers*, Adv Op Comm T&F, July 1, 1998, TSB-A-98(43)S.

DATED: July 21, 2008

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Taxpayer Guidance Division

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.