

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

TSB-A-09(61)S
Sales Tax
October 15, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S081231A

On December 31, 2008, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its lighting design services are subject to sales tax (1) when Petitioner is hired by a licensed architect or engineer and Petitioner's work is wholly incorporated into the architect's or engineer's signed and sealed documents and (2) when a building owner hires Petitioner and the architect or engineer separately with Petitioner's work being fully incorporated into the signed and sealed documents of such licensed professionals. Petitioner's receipts for these services are subject to sales tax under Tax Law § 1105(c)(7).

Facts

Petitioner is a firm dedicated to the design, layout, and specification of architectural lighting systems. It acts as a subconsultant to architects and engineers under whose supervision Petitioner does the following:

1. prepares lighting fixture layouts on background drawings provided by the architect or engineer;
2. recommends lighting fixtures based on performance and safety standards as well as the aesthetic concept for lighting established in conjunction with the architect and the client;
3. performs technical lighting level calculations to ensure the lighting meets the state and local energy codes and the standards recommended by the American Society of Heating, Refrigerating and Air-Conditioning Engineers for energy consumption. Calculations are also run to demonstrate that the lighting to be provided meets the standards for "suitability to task" as established by the Illuminating Engineering Society of North America;
4. prepares technical specifications for the general illumination lighting systems and lighting control systems, which are an integral part of the overall building;
5. assists the electrical engineer in developing a strategy for emergency lighting within the building.

Petitioner's work is incorporated into the architect's or engineer's signed sealed drawings. These drawings along with the specifications and general conditions form the contract documents to be used in the bidding and construction for the building. Occasionally, Petitioner will work directly for a building owner. In these cases, Petitioner's work is still coordinated and monitored by the architect and forms part of the architect's contract documentation.

Analysis

Tax Law §1105(c)(7) imposes sales tax on receipts from the sale, except for resale, of 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. Such services

shall not include services which consist of the practice of architecture, as defined in section 7301 of the Education Law, or the practice of engineering, as defined in section 7201 of the Education Law, if the services are performed by an architect or engineer having a license or permit under the Education Law. Petitioner performs design services. None of its employees are licensed architects or engineers. Therefore, the exclusion in section 1105(c)(7) for architectural or engineering services does not apply to Petitioner's work.

Petitioner's receipts for providing interior design services (i.e., designs for the interior of a building) to architects or engineers are subject to sales tax. The resale exclusion does not apply to Petitioner's sale of design services to architects or engineers because the architects and engineers are not themselves selling a design service subject to sales tax. The incorporation of Petitioner's design work into the architect's or engineer's own signed and sealed designs has no bearing on the taxability of Petitioner's service. The statutory exclusion in section 1105(c)(7) applies only to the sale of architectural or engineering services by licensed architects or engineers. It does not apply to the purchase of design services by them.

Petitioner's receipts for providing design services to building owners who hire an architect or engineer separately are also subject to sales tax. The incorporation of Petitioner's design work into the design performed by an architect or engineer does not affect the taxability of Petitioner's service.

It should be noted that the local sales tax imposed by New York City does not apply to interior decorating and designing services. See Tax Law §1210(a)(4)(iv) and *Repeal of New York City's Sales Tax on Interior Decorating and Design Services*, TSB-M-95(13)S. Accordingly, the charges for Petitioner's services delivered in New York City are subject to New York State sales tax (including the tax imposed on behalf of the Metropolitan Commuter Transportation District), but are not subject to New York City sales tax. Interior decorating and design services are subject to State and local sales taxes outside of New York City.

DATED: October 15, 2009

/S/
Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

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.