

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

TSB-A-12(27)S
Sales Tax
October 15, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S111020A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether patent drawings electronically delivered to its patent attorney clients are subject to sales tax. We conclude that receipts from the sale of these electronic drawings are not subject to sales tax.

Facts

Petitioner provides formal patent drawings to attorneys for filing with the U.S. Patent and Trademark Office. Delivery of the drawings is effectuated solely by electronic means with no tangible format. Once received by the attorney clients, the drawings are filed with an application for patent registration.

Analysis

Petitioner's receipts from the sale of patent drawings in electronic form are not subject to sales tax. The Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property, except as specifically excluded. *See* Tax Law § 1105(a); 20 NYCRR § 526.6(a). A retail sale is defined as "[a] sale of tangible personal to any person for any purpose Tax Law § 1101(b)(4)(i). Tangible personal property is defined as corporeal personal property of any nature having a material existence and perceptibility to human senses. It includes artistic items, such as sketches, paintings, photographs, moving motion pictures, and recordings. *See* Tax Law § 1101(b)(6); 20 NYCRR § 526.8(a).

In a previous Advisory Opinion, TSB-A-97(48)S, the Petitioner was a patent draftsman whose primary service was to create formal drawings for sale to attorneys. In that Advisory Opinion, the drawings were delivered by mail as paper-print outs, and not delivered electronically. The prior Advisory Opinion concluded that the receipts from the sales of the patent drawings were subject to sales tax. In TSB-A-11(22)S, patent drawings were delivered to the petitioner's attorney clients as electronic PDF files. Because the drawings were converted to PDF files, delivery of the drawings was done electronically. The drawings were not tangible personal property as defined in Tax Law § 1101(b)(6), and therefore, were not subject to tax.

In this Petition, Petitioner's patent drawings are not delivered in tangible form. Accordingly, Petitioner's receipts from the sale of these patent drawings are receipts for the sale of intangible property that is not subject to sales tax.

DATED: October 15, 2012

/S/

DEBORAH R. LIEBMAN
Deputy 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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.