

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-16(5)S
Sales Tax
February 17, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130124A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether its charges to customers for images delivered electronically that embody its interior lighting design services are subject to sales tax.

We conclude that Petitioner's receipts from its interior lighting design services are subject to sales tax, even if it delivers such services to its customers by electronic means.

Facts

Petitioner is engaged in the business of providing lighting design services. It has an office in New York City. Petitioner states that it has been collecting sales tax imposed by Tax Law § 1105 on sales of its services.

In general, Petitioner designs, advises on, and aids in the selection of lighting fixtures and equipment. Petitioner's services include design and coordination meetings in New York City, project administration, a conceptual lighting design presentation, meeting with its customer's architect, evaluating bids, construction observation, and various additional services. All design and documentation services are undertaken by its own employees. The culmination of Petitioner's services is a set of documents. The contract provides that "All drawings, specifications and other project documents will be transmitted electronically. Any hard copies are to be printed by others from [Petitioner's] electronic files."

Although Petitioner has been collecting sales tax from its customers on charges for its lighting design services, it believes that, based on the delivery of project documents in electronic form, its services should not be subject to sales tax. Petitioner cites two Advisory Opinions, TSB-A-09(20)S and TSB-A-12(23)S, in support of that view and questions whether it must continue to collect tax.

Analysis

Tax Law § 1105 (c) (7) imposes sales tax on receipts from every sale, except for resale, of interior designing services, whether or not in conjunction with the sale of tangible personal property. Tax Law § 1110 (a) (C) imposes compensating use tax on the use within the State of interior designing services. However, New York City's local sales and use taxes do not apply to such services. *See* Tax Law § 1210 (a) (4) (iv).

Interior design services relate to the planning and design of interior spaces and include preparation of layout drawings, schedules, and specifications pertaining to the planning and design of interior spaces; design and planning of fixtures; lighting design; and any similar

services. The point of delivery determines the sales tax rate that applies to a sale of such services. *See* ST-400, *Interior Decorating and Design Services (TB-ST-400)*.

When interior design services are delivered by providing only renderings or plans, the sale is taxable where the plans are delivered to the purchaser. Plans or renderings delivered to the purchaser in New York State are subject to state and local sales tax at the rate in effect at the place of delivery, regardless of where the property that is the subject of the plan is located. Plans or renderings delivered outside New York State are not subject to New York State and local sales tax. However, later use of the plans or renderings in New York State will subject the purchaser to New York State and local use tax based on the location where the plans or renderings are used.

If the services provided consist of a combination of renderings or plans and on-site advice under a single contract, and for a single charge, the sale is considered to be an integrated transaction. The overall service is considered to be delivered at the location of the property where the on-site advice is provided and at the time the on-site advice is given. If the property is located in New York State, the sale is subject to State and local sales tax. On the other hand, if the same services are sold under a single contract but the contract provides separate and reasonable charges for each component, then the delivery of each component will be considered separately. If the plans are delivered in New York, the separate charge for them would be taxable. If the on-site service under the contract is provided in New York, the separate charge would also be taxable. If the on-site service is provided out of state, the separate charge for that service would not be taxable.

If a single contract includes a combination of renderings or plans and on-site advice, for a single charge, and the property where the on-site advice is provided is located out of state, the entire charge would not be taxable. However, if the designer delivers the plans into New York but the on-site service is never provided (for example, the building is not built), then the charge for the delivery of the plans into New York would become taxable at the time when it is determined that the on-site service will not be provided. If the parties renegotiate a reduced charge because the designer will not provide the on-site service, that reduced charge would be the amount subject to tax. Otherwise, the entire original amount would be subject to tax.

Petitioner's electronically delivered images are the culmination of its lighting design services. Petitioner's lighting design service also includes other activities, such as meetings with its customers and their architects, presentations to the customer, bid evaluations, visiting the construction site to observe, and other things. Interior design services may be delivered to the customer in a variety of ways, including by providing only renderings or plans, whether or not in electronic form. Thus, Petitioner's electronic delivery of its interior lighting design service plans remain a lighting design service subject to tax if delivered in this State as described in Tax Bulletin ST-400.

As noted above, New York City's local sales tax does not apply to interior design services. If Petitioner's services are delivered in New York City, they will be subject only to the New York State sales tax, including the tax imposed on behalf of the Metropolitan Commuter Transportation District. *See* Tax Law § 1210 (a) (4) (iv); TSB-M-95(13)S.

The Advisory Opinions that Petitioner cites do not change our analysis. In TSB-A-09(20)S, Petitioner's services included designing logos and graphic images and designing and writing content for printed publications. This Advisory Opinion is not relevant to the question presented here because it addressed the sales tax imposed on tangible personal property, not the sales tax on interior design services. Moreover, that Advisory Opinion made clear that the design services it addressed did not include interior decorating or design services subject to tax under § 1105(c)(7). The analysis in TSB-A-12(23)S applied to the electronic delivery of drawings created for submission to the US Patent Office or for use in court trials or mediation and arbitration hearings. The electronic drawings were distinguished from physical drawings, which would have been considered tangible personal property subject to the sales tax imposed by Tax Law § 1105(a). Thus, neither of these Advisory Opinions affects the analysis of whether a service is subject to the sales tax imposed on interior design services, which does not require the transfer of any component of tangible personal property and is taxable under a different provision of law.

DATED: February 17, 2016

/S/

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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