

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-91 (47)S
Sales Tax
July 5, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910104A

On January 4, 1991 a Petition for Advisory Opinion was received from The Association of Professional Art Advisors, P.O. Box 2485, New York, New York 10163.

The issue raised by Petitioner, The Association of Professional Art Advisors, is whether art advisory services and ancillary support services rendered by professional art advisors/consultants are subject to the tax imposed under the provisions of Section 1105(c)(7) of the Tax Law.

A professional art advisor is a person who is qualified by education and experience to provide professional guidance to the collector on the purchase, installation, placement and maintenance of works of art.

The professional experience and educational background of a professional art advisor normally includes a thorough knowledge of art history, on the job experience with a museum, gallery or other arts organization that teaches correct curatorial skills and art handling procedures, and knowledge of the art market. The following hypotheticals represent the various services which a professional art advisor may provide:

A. An art advisor is retained to advise a firm on the purchase of important contemporary paintings on canvas, unique paintings on paper, original signed, limited edition prints, and photographs. Most of the artists and photographers whose works are acquired are well known in the art world, and many are represented in museum collections. The primary purpose of these services is to advise the client on the acquisition of an art collection with investment potential, one which will distinguish the client for its commitment to a quality art acquisition program, enhance its prestige and promote greater understanding of art and its enjoyment for employees, visitors and clients. For these services the client pays a percentage of the art acquisition budget.

B. For the firm described in paragraph A, the art advisor also provides curatorial services. Curatorial services include photographing and cataloging the collection, periodically reassessing the value of the collection for insurance purposes, arranging for signage and labels for the artworks, selecting framers who are attentive to archival techniques, and arranging for conservators for restoration of the collection when necessary. Curatorial services are billed at a per diem rate.

C. In connection with the relocation of a client's business, the art advisor provides the following ancillary or support services: inventory of the collection, identification of art work which requires special packing, supervision of packing and moving, and supervision of re-installation at the new location. The latter services require the advisor to contract on the client's behalf for professional art installers to carry out the installation. Although the client retains an interior

decorator to accomplish its design objectives, the client relies on the services of the art advisor to advise on the placement and location of the art collection. Criteria used by the advisor to site the works include: (1) the importance of the work; (2) theme; (3) placement of works by the same artist in one location in order to educate visitors or employees about an artist's style and evolution; (4) exposure of employees to different art works in the collection in furtherance of their art education.

D. An art advisor advises private collectors in New York City on art acquisitions for their collections; advice is provided with respect to specific artists and artworks regarding quality and investment potential. For these services, the art advisor charges either a per diem fee, or a percentage of the art budget. The advisor may also advise these clients on proper framing and restoration, when needed, and occasionally supervises the installation of artwork in the home. The latter ancillary services are billed at a per diem rate.

E. For a corporate client, the art advisor recommends the purchase of works by emerging younger artists with investment potential. For this advice, the art advisor is paid a fee based on a percentage of the work acquired. No other curatorial, installation, or other related services are provided for this client.

F. An art advisor is retained to provide collection management and consultation services including location of artwork based on themes for a corporate art collection program. The collection includes prints, wall sculpture, textiles, photography and painting. Ancillary services include providing signage.

G. An art advisor is retained to advise a firm on the acquisition of over 100 works of art of various mediums ranging in price from \$800 to \$75,000 in connection with relocation to new offices and to provide advisory and supervisory services in connection with the reframing of the existing collection and the installation of the entire collection of 250 artworks at the new location. Signage is provided for new works. The art advisor also provides services in connection with the preparation of a catalogue on the collection.

H. An art advisor is retained to provide appraisal services and to review an existing collection of 300 art works with a view toward recommending deaccessioning one third of the collection. The art advisor provides supervisory services in connection with framing and installation of the remaining collection at a new location.

A brochure prepared by Petitioner sets forth guidelines and standards for its members. The brochure states, in part:

What is an art advisor?

An art advisor is a person who is qualified to provide professional guidance to the collector on the purchase, installation, placement and maintenance of works of art. The art advisor is prepared to assist in the arrangement of tours, lectures and other art-related programs. Where

required, the art advisor is also prepared to work with architects and/or designers to integrate the art program with design objectives. . . .

The U.S. Department of Labor's Dictionary of Occupational Titles, Fourth Edition, 1977 states in part:

142.051-014 INTERIOR DESIGNER (profess. & Kin.)

Plans, designs, and furnishes interior environments of residential, commercial, and industrial buildings: Confers with client to determine architectural preferences, purpose and function of environment, budget, types of construction, equipment to be installed and other factors which affect planning interior environments. Integrates findings with knowledge of interior design and formulates environmental plan to be practical, esthetic, and conducive to intended purposes, such as raising productivity, selling merchandise, or improving life style of occupants. Advises client on interior design factors, such as space planing, layout and utilization of furnishings and equipment, color schemes and color coordination. Renders design ideas in form of paste ups, drawings, or illustrations, estimates material requirements and costs, and presents design to client for approval. Selects or designs and purchases furnishings, art works, and accessories. Subcontracts fabrication, installation, and arrangement of carpeting, fixtures, accessories, draperies, paint and wall coverings, art work, furniture, and related items. May plan and design interior environments for boats, planes, buses, trains and other enclosed spaces. May specialize in particular field, style, or phase of interior design. May specialize in decorative aspects of interior design and be designated INTERIOR DECORATOR (profess. & kin.).

Section 1105(c)(7) of the Tax Law imposes sales tax on:

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 practices 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 1101(b) of the Tax Law states, in part:

When used in this article for the purposes of the taxes imposed by subdivisions. . .(c). . .of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

(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 . . . (3) . . . (7) . . . 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. . . .

Section 1105(a) of the Tax Law, imposes tax on:

"The receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1105(c) of the Tax Law imposes tax on:

The receipts from every sale, except for resale, of the following services:

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

Along with the tax imposed upon the receipts from every sale, except for resale, of the services of maintaining, servicing or repairing tangible personal property and the services of interior decorating and designing as imposed under parts (3) and (7), respectively, Section 1105(c) of the Tax Law also imposes tax upon the receipts from every sale, except for resale, of certain other enumerated services.

The application of Sections 1105(a), 1105(c)(3) and 1105(c)(7) of the Tax Law to the professional art advisor's services as presented in Petitioner's hypotheticals "A" through "H", above, are hereinafter set forth. In determining whether the services rendered constitute interior decorating and design services, the particular services rendered are considered in light of the definition of interior designer set forth in the U.S. Department of Labor's definition of interior designer and Petitioner's definition of an art advisor.

A. Consulting services, in general, are not one of the services specifically enumerated under Section 1105(c) of the Tax Law. When an art advisor's services only involve consulting with a client for the sole purpose of advising the client whether or not to purchase certain works of art from an investment potential prospective, such services will not be considered as the performance

of an interior decorating and designing service nor as the performance of any other service enumerated under Section 1105(c) of the Tax Law. Accordingly, receipts from the sales of such consulting services will not be subject to New York State or local sales tax.

However, if the art advisor's consultation with the client results in the art advisor selecting framing for the artwork and electing or supervising the location and installation of the artwork, the art advisor will be considered to be performing interior decorating and designing services, and the art advisor's total receipts from charges to the client, including charges for the consulting services, will be subject to the tax imposed under Section 1105(c)(7) of the Tax Law.

It is noted that if the art advisor were to sell works of art to the client as part of the curatorial services, the receipts for the cost of the artwork as well as the curatorial services in connection with the artwork would be subject to sales tax.

B. The art advisor's performance of the curatorial services of photographing and cataloging the client's art collection, reassessing the value of the collection for insurance purposes, arranging for signage and labels for the artwork, selecting framers who are attentive to archival techniques and arranging for conservators for restoration of the collection when necessary do not constitute the performance of interior decorating and designing services, whether performed individually or collectively.

However, receipts from charges to clients for photographing and cataloging the client's art collection will be subject to the tax imposed under Section 1105(a) of the Tax Law where such photographs and cataloging are transferred to the client, as such transaction will be considered a sale of tangible personal property to the client.

The services of reassessing the value of the collection for insurance purposes, arranging for signage and labels for the artworks, selecting framers who are attentive to archival techniques and arranging for conservators for restoration of the collection when necessary are not among the services enumerated under Section 1105(c) of the Tax Law and the receipts from charges for arranging for such services will not be subject to New York State and local sales tax. However, in any instance where Petitioner purchases the signs and labels, the framing services and the restoration services for resale to the client, Petitioner will be liable for collecting sales tax on the charges to the client under the provisions of Sections 1105(a) and 1105(c)(3) of the Tax Law, respectively.

It is noted that when any of the curatorial services are performed along with activities which are considered to fall within interior decorating and designing services as discussed in "A", above, the art advisor's total receipts from charges to the client, including receipts from curatorial services, will be subject to the tax imposed under Section 1105(c)(7) of the Tax Law.

C. The ancillary or support services of inventorying the client's art collection, identifying artwork which requires special packing and supervising the packing and moving of the collection, when performed along with relocating the client's art collection, without the performance of any

other services will be considered as moving services and the receipts from charges to the client for such services will not be subject to New York State or local sales tax.

However, the art advisor's contracting on behalf of the client for professional art installers and the supervision of the reinstallation of the client's art collection at the new location will be considered as interior decorating and designing services. Accordingly the receipts from the total charges to the client for such services, including the charges for the moving services, will be subject to the tax imposed under Section 1105(c)(7) of the Tax Law.

D. When the art advisor advises a private collector within New York City on art acquisitions with respect to specific artists and artworks regarding quality and investment potential, the art advisor is considered to be performing a consulting service. Where the art advisor advises the client on the proper framing of an artwork and on restoration procedure for such artwork, without performing or arranging for the actual framing or restoration service, the art advisor is also considered to be performing a consulting service. The receipts from charges billed to the client for such consulting services will not be subject to New York State or local tax.

However, when the art advisor supervises the installation of the artwork within the client's home, the art advisor will be considered to be performing interior decorating and designing services and the total charges to the client, including charges for the previously mentioned consulting services will be subject to the tax imposed under Section 1105(c)(7) of the Tax Law.

E. When the art advisor recommends that a corporate client purchase works by emerging younger artists on the basis of investment potential, without providing any other services, the art advisor will be considered to be performing a consulting service. The charges to the corporate client for such services will not be subject to state or local sales tax.

F. When an art advisor is retained to provide collection management and consultation services consisting of location of artwork based on themes for a corporate art collection program which includes print, wall sculpture, textiles, photography and paintings, and which provides for signage, the art advisor will be considered to be performing interior decorating and designing services. Accordingly, the total receipts from charges to the client for such services will be subject to the tax imposed under Section 1105(c)(7) of the Tax Law.

G. When an art advisor is retained to advise a firm on the acquisition of over 100 works of art of various mediums, regardless of price, in connection with relocation to new offices, to provide advisory and supervisory services in connection with the reframing of the existing collection and the installation of the entire collection of 250 artworks at the new location, to provide signage for the new artwork and to provide services in connection with the preparation of a catalogue on the entire collection, the providing of the advisory and supervisory services in connection with the reframing and the installation at the new location will be considered as performing interior decorating and designing services. Accordingly, the art advisor's total charges to the client, including the charges for signage, for advice pertaining to the acquisition of new art and for the services

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performed in connection with preparing a catalogue will be subject to the tax imposed under Section 1105(c)(7) of the Tax Law.

H. When an art advisor is retained to only provide appraisal services and to review an existing collection of artworks with a view toward recommending deaccessioning one third of the collection, the charges to the client for such services will not be subject to New York State or local sales tax as such services are not among the taxable services enumerated under Section 1105(c) of the Tax Law. However, when the art advisor also provides supervisory services in connection with the framing and the installation of the remaining collection at a new location, the art advisor is considered to be performing interior decorating and designing services and the total charges to the client for such services including the charges for appraisal services and for recommending the deaccessioning of part of the collection will be subject to the tax imposed under Section 1105(c)(7) of the Tax Law.

DATED: July 5, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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