

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

TSB-A-94 (26)S
Sales
June 23, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940310A

On March 10, 1994, a Petition for Advisory Opinion was received from Leslie H. Barker, RFD Box 351, Potterbrook Rd. Chestertown, N.Y. 12817.

The issue raised by Petitioner, Leslie H. Barker, is whether sales of Petitioner's specialized illustrations are subject to sales tax and, if so, if Petitioner is hired by an engineer whose client is the New York State Department of Transportation, are such sales subject to sales tax.

Petitioner is a highly specialized illustrator whose primary clients are engineering firms and architectural firms. Occasionally, Petitioner will perform services for real estate developers and advertising agencies.

Petitioner is given extremely complex drawings, tests, and site information for a project. This information is studied and used to generate "future conditions." For example, an engineering firm may need photographs or drawings to be used in an environmental impact study. A photograph of an existing landfill site along with the engineering data to cap the site is given to Petitioner. Petitioner then puts all the technical information together and formulates what the landfill will look like after it is capped. This is then painted into an existing photo to be used by Petitioner's client.

Another example would be to take an existing photograph of a parcel of undeveloped land purchased by a power company for a new substation and line. Petitioner digests the technical information and paints new conditions for zoning approval.

Section 1105(a) of the Tax Law imposes a tax upon "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 526.8 of the Sales and Use Tax Regulations defines tangible personal property as follows:

(a) Definition. The term tangible personal property means corporeal personal property of any nature having a material existence and perceptibility to the human senses. Tangible personal property includes, without limitation:

...

(3) artistic items, such as sketches, paintings, photographs, moving picture films and recordings;

...

Petitioner's sale of drawings, sketches and photographs is the sale of tangible personal property. (See: Awad Architectural Models, Inc., Adv Op St Tx Comm., February 14, 1986, TSB-A-86(9)S). Accordingly the charge for such items is subject to sales tax unless Petitioner receives a properly completed exemption certificate from the client. If New York State or any of its agencies, instrumentalities or subdivisions are the direct purchaser and payer of record, no exemption certificate is necessary.

DATED: June 23, 1994

/s/

PAUL B. COBURN

Deputy Director

Taxpayer Services Division

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