

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

TSB-A-94 (44)S
Sales Tax
September 19, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940809B

On August 9, 1994 a Petition for Advisory Opinion was received from Walter R. Zernis L.M.T., DBA Bodycare, 439 54th Street, Brooklyn, New York 11220.

The issue raised by Petitioner, Walter R. Zernis L.M.T. DBA Bodycare, is whether massage services rendered by a massage therapist licensed under Title 8 of the New York State Education Law are subject to New York State and Local Sales and Use Tax and the New York City Sales and Use Tax.

Petitioner has been a licensed massage therapist pursuant to Article 155 of Title 8 of the Education Law since March 1983. To earn certification, Petitioner enrolled in a certified massage therapy program with internship and passed a comprehensive technical written examination administered by The New York State Board of Massage of the New York State Education Department. Petitioner also is a member of two professional massage therapy organizations; the American Massage Therapy Association and the New York State Society of Medical Massage Therapists. Petitioner must complete 20 hours of continuing education courses biannually.

Petitioner maintains an office at 439 54th Street, Brooklyn, New York 11220, where he conducts approximately 500 sessions per year. Some of Petitioner's patients schedule appointments for stress reduction therapy, while others are referred by their physicians, chiropractors or other licensed medical personnel. Petitioner's services are routinely reimbursed under medical insurance plans and Petitioner provides services under the New York State No-Fault Insurance and Workers Compensation programs.

Section 1212-A(a)(2) of the Tax Law and Section 11-2002(h) of the New York City Administrative Code impose a tax on the receipts from every sale of "...massage services...; but excluding services rendered by a physician, osteopath, dentist, nurse, physiotherapist, chiropractor, podiatrist, optometrist, ophthalmic dispenser or a person performing similar services licensed under Title VIII of the Education Law as amended...." (Emphasis added)

Article 155 of Title 8 of the New York State Education Law states, in part:

MASSAGE

7800. Introduction

This article applies to the profession of massage. The general provisions for all professions continued in article one hundred thirty of this title apply to this article.

7801. Definition of practice of massage

The practice of the profession of massage is defined as engaging in applying a scientific system of activity to the muscular structure of the human body by means of stroking, kneading, tapping and vibrating with the hands or vibrators for the purpose of improving muscle tone and circulation.

7802. Practice of massage and use of title "masseur" or "masseur" or the term "massage"

Only a person licensed or authorized pursuant to section seven thousand eight hundred five of this article shall practice massage and only a person licensed under section seventy-eight hundred four of this article shall use the title "masseur" or "masseur". No person, firm, partnership or corporation shall describe its services in any manner under the title "massage" unless such services as defined in section seventy-eight hundred one of this article are performed by a person licensed or authorized pursuant to section seventy-eight hundred five to practice massage under this article.

* * *

7804. Requirements for a professional license

To qualify for a license as a licensed masseur or licensed masseuse, an applicant shall fulfill the following requirements:

(2) Education: have received an education, including high school graduation and graduation from a school or institute of massage with a program registered by the department, or its substantial equivalent in both subject matter and extent of training, provided that the program in such school or institute shall consist of classroom instruction of a total of not less than five hundred hours in subjects satisfactory to the department;

(3) Examination: pass an examination satisfactory to the board and in accordance with the commissioner's regulations;

7805. Exempt persons

Nothing contained in this article shall be construed to prohibit:

1. The practice of massage by any person who is authorized to practice medicine, nursing, osteopathy, physiotherapy, chiropractic, or podiatry in accordance with the provisions of this title.

Even though Petitioner is engaged in the profession of massage and is licensed under Title 8 of the Education Law, the services that he provides are not medical in nature as are the services provided by the categories of professionals enumerated in Section 1212-A of the Tax Law and section 11-2002(h) of the New York City Administrative Code. Therefore Petitioner is not

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providing "similar services" as intended by the aforesaid sections and accordingly his services are subject to the New York City sales tax. Carapan, Inc., Adv Op Comm T&F, June 21, 1993, TSB-A-93(40)S.

It is noted that Section 1105(c) of the Tax Law imposes New York State sales and compensating use tax on the receipts from certain enumerated services. Since massage services are not included within the services enumerated under Section 1105(c) of the Tax Law, the receipts from massage services are not subject to the New York State sales or compensating use tax. Carapan, Inc., Supra.

DATED: September 19, 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.