

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

TSB-A-98(43)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S971114A

On November 14, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from the New York Society of Renderers, 201 West 21st Street, New York, NY 10011.

Petitioner's members are renderers, i.e., artists who provide artistic renderings to architects, clothing manufacturers, interior designers and others. Their work is all copyrighted and cannot be reproduced without their permission. Petitioner sets forth twenty-three questions concerning the application of the New York State sales and use tax to the activities of its members.

Applicable Law and Regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) 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 (1), (2), (3), (5), (7) and (8) 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. . . .

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration

(6) Tangible personal property. Corporeal personal property of any nature. . . .

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.-- . . . there is hereby imposed and there shall be paid a tax of four percent upon:

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

* * *

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

* * *

(7) 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 practice 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 1110(a) of the Tax Law provides, in part:

Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state . . . of any tangible personal property purchased at retail.
. . .

Section 1115(a)(12) exempts from sales tax the receipts from the sale of "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting . . . but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery, equipment or apparatus." Section 1105-B of the Tax Law provides for the elimination of the sales tax on receipts from sales of parts with a useful life of one year or less, as well as tools and supplies, for use or consumption directly and predominantly in the production of tangible personal property for sale.

Section 7301 of the Education Law defines the practice of architecture as follows:

The practice of the profession of architecture is defined as rendering or offering to render services which require the application of the art, science, and aesthetics of design and construction of buildings, groups of buildings, including their components and appurtenances and the spaces around them wherein the

safeguarding of life, health, property, and public welfare is concerned. Such services include, but are not limited to consultation, evaluation, planning, the provision of preliminary studies, designs, construction documents, construction management, and the administration of construction contracts.

Section 526.7(f) of the Sales and Use Tax Regulations provides, in part:

Reproduction rights. (1) The granting of a right to reproduce an original painting, illustration, photograph, sculpture, manuscript or other similar work is not a license to use or a sale, and is not taxable, where the payment made for such right is in the nature of a royalty to the grantor under the laws relating to artistic and literary property.

(2) Mere temporary possession or custody for the purpose of making the reproduction is not deemed to be a transfer of possession which would convert the reproduction right into a license to use. (See *Howitt v. Street and Smith Publications, Inc.*, 276 N.Y.345 and *Matter of Frissell v. McGoldrick*, 300 N.Y. 370.)

(3) Where some use other than reproduction is made of the original work, such as retouching or exhibiting a photograph, the transaction is a license to use, which is taxable.

Section 526.8(a) of the Sales and Use Tax Regulations provides, in part:

... 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 . . .

Technical Services Bureau Memorandum, TSB-M-97(6)S, dated August 20, 1997, entitled Expanded Sales and Compensating Use Tax Exemption for Promotional Materials provides, in part:

Effective March 1, 1997, **printed promotional materials** mailed or shipped to destinations in the state are exempt from tax when all of the conditions listed below are met.

- The printed promotional materials are ultimately mailed or shipped to customers or prospective customers of the purchaser of the printed promotional materials.

- The printed promotional materials are mailed or shipped by the purchaser of the materials using a common carrier, the U.S. Postal Service or a like delivery service. (This requirement is also met if the mailing or shipping is arranged by a third party [such as a printer/mailer] on behalf of the purchaser of the promotional materials).
- There is no charge to the purchaser's customer or prospective customer (ultimate recipient) for the promotional materials, or for mailing or shipping them.
- The purchaser of the promotional materials gives a properly completed Form ST-121.2, *Certificate of Exemption for Purchases of Promotional Materials*, to the seller of the promotional materials.

* * *

Purchases of tangible personal property used by the purchaser to print its own promotional materials in-house, such as paper, ink, and mechanicals, do not qualify for the exemptions available for promotional materials delivered in the state.

Example 11. A company uses in-house printing equipment and supplies (paper, ink, etc.) to produce its own promotional materials. The promotional materials consist of advertising brochures and catalogs. The company will ship the promotional materials to customers and prospective customers via the U.S. Postal Service, without charge to the customers. Since the company is purchasing raw materials, and is not purchasing promotional materials, these purchases are taxable. However, if the company delivers any of the brochures or catalogs outside the state for use outside the state, the company will be entitled to a refund of any sales tax or use tax paid on the raw materials incorporated into those brochures or catalogs, as provided under section 1119(a)(4) of the Tax Law, with respect only to property upon which fabricating, processing, printing, or imprinting was performed.

Opinion

The following are the questions presented by Petitioner concerning its activities and the appropriate answers (it is assumed in these questions that all renderings are copyrighted):

1. Q. A renderer provides, for a consideration, a rendering from an architect's plans to the architect and the architect hangs it in his office. Is the price the renderer charges the architect for the rendering subject to sales tax?

- A. Yes, if the transfer by the renderer, for consideration, includes all rights to usage of the rendering, such transfer will constitute the sale of tangible personal property subject to the sales tax imposed under Section 1105(a) of the Tax Law.
2. Q. A renderer provides a rendering of an interior designer's plan to the interior designer, and the interior designer shows it to his client; the terms of the sale are not limited to the right to reproduce. Is the purchase of the rendering by the interior designer subject to sales tax?
- A. Yes, the renderer is engaged in making retail sales of tangible personal property (completed designs) to the interior designer and is accordingly required to collect the applicable sales tax (see Corporate Graphics, Inc., Adv Op Comm T&F, November 17, 1982, TSB-A-82(43)S).
3. Q. A renderer provides, for a consideration, a rendering of a proposed building or development to a developer or an architect and the rendering is published in a newspaper with a story about the possible development. Is the transfer of the rendering from the renderer to the developer or the architect subject to sales tax?
- A. Pursuant to Section 526.7(f) of the Sales and Use Tax Regulations, the granting of a right to reproduce an original rendering is not a taxable license to use or a sale since the customer merely takes temporary possession or custody of the rendering and payments for the right to reproduce are made in the nature of a royalty. The transfer of the rendering by the renderer to the developer or the architect which will be supplied to a newspaper for one-time reproduction only, where the developer or the architect returns the rendering unchanged to the renderer, would constitute the sale of a one-time reproduction right which would not be subject to sales or use tax (see Alan/Anthony, Inc., Adv Op Comm T&F, July 30, 1992, TSB-A-92(60)S).
4. Q. A renderer provides to a fashion house, for a consideration, a rendering of a design which the fashion house reproduces without change and shows to potential customers. Is the transfer of the rendering, which is returned to the renderer, subject to sales tax?
- A. In those instances where the renderer temporarily transfers a rendering to a fashion house which is to be reproduced, and the original rendering must be returned to the renderer in its original form without alterations, such transfers would not constitute sales of tangible personal property as defined in Section 1101(b)(5) of the Tax Law. Accordingly, the renderer's charges to the fashion house would not be subject to state or local sales tax (see Matter of Vignelli Associates, Ltd., et.al., State Tax Commission, February 11, 1981, TSB-H-81(26)S; Chermayeff and Geismar Associates, Adv Op Comm T&F, April 30, 1985, TSB-A-85(11)S; Jim Bush Photography, Adv Op Comm T&F, September 20, 1988, TSB-A-88(48)S).

However, if a renderer's design project results in the production of an original rendering which is sold, rented or licensed by the renderer to the fashion house, e.g., for the purpose of communicating design concepts to potential customers, the transaction would be subject to tax under Section 1105(a) of the Tax Law even if the renderer retains the rights to the actual artwork (see Zagoren Group, Inc., Dec Tax App Trib, May 19, 1994, TSB-D-94(17)S). The sale from the renderer to the fashion house may be exempt from tax if the artwork is used by the fashion house directly and predominantly in the production of tangible personal property for sale. See Section 1115(a)(12) of the Tax Law.

5. Q. A renderer provides to a fashion house, for a consideration, a rendering of clothing which the fashion house is going to produce for sale, and the fashion house sends the copyrighted rendering to a fashion magazine. Is the transaction between the renderer and the fashion house subject to sales tax?

A. If transfer of possession of the rendering by the renderer to the fashion house is temporary and for the specific restricted purpose of reproduction only, e.g., for one-time reproduction by a fashion magazine, after which the original rendering is returned unaltered to the renderer, the transaction between the renderer and the fashion house would not constitute a taxable sale (Alan/Anthony, Inc., supra). Alternatively, the transfer of designs from the renderer to the fashion house to be used by the fashion house to produce clothing, unless exempt under Section 1115(a)(12) of the Tax Law, would be considered the sale of tangible personal property subject to sales tax.

6. Q. A renderer provides, for a consideration, a rendering of clothing to a fashion house, to be used in the production of advertising material which will be mailed out along with its bills. When the fashion house receives the rendering it sends it to the printer, either the fashion house or the printer alters the drawing, then multiple copies are printed for the mailing. Is the transfer of the rendering by the renderer to the fashion house as described above subject to tax?

A. The renderer in this instance is selling tangible personal property which is used to produce advertising (promotional) materials printed for the fashion house by an outside printer. Such a sale is exempt from New York State and local sales tax provided the fashion house gives the renderer a properly completed Form ST-121.2, Certificate of Exemption for Purchases of Promotional Materials, and provided the sale of the printed promotional materials otherwise qualifies for exemption under Section 1115(n)(4) of the Tax Law (see TSB-M-97(6)S, supra).

7. Q. a) A renderer is not a licensed architect, but he or she prepares and provides, for a consideration, plans and renderings to an architect which the architect includes in the service it sells to its client. Is the transfer of the plans and renderings from the renderer to the architect taxable?

b) Is the transfer of plans and renderings by the renderer directly to the architect's client taxable if the plans have been stamped by an architect?

A. a) Tangible personal property purchased for use in performing a service not subject to tax is not purchased for resale. See Section 526.6(c)(7) of the Sales and Use Tax Regulations. Architectural service is one of the services specifically excluded from tax under Section 1105(c)(7) of the Tax Law. If the architect as described above uses the plans and renderings in providing architectural services to its clients, sales of these items by the renderer to the architect are not sales for resale but are retail sales of tangible personal property that are subject to the tax imposed under section 1105(a) of the Tax Law (see Lenon Sokolowski Models, Dec Tax App Trib, May 16, 1991, TSB-D-92(70)S). If the architect purchases the items for resale to its client as such or as a component part of services otherwise subject to tax and gives the renderer a Resale Certificate, Form ST-120, the renderings are considered to be purchased for resale and are not subject to tax until the time that the property or services are resold to the client. See Section 1101(b)(4) of the Tax Law.

b) Section 1105(c)(7) of the Tax Law imposes sales tax on receipts from the sales of interior decorating and designing services, (whether or not in conjunction with the sale of tangible personal property) even if performed by or on behalf of a licensed architect. Excluded from sales tax are design services which consist of the practice of architecture as defined in Section 7301 of the Education Law, if performed by a licensed architect. Generally, if the renderer is not a licensed architect and sells plans or renderings directly to the client, even if the plans or renderings have been stamped by a licensed architect, the sale is taxable. It is noted, however, that certain exemptions and exclusions exist under the Education Law for not requiring a license or permit for architectural services. See Sections 7306 and 7307 of the Education Law. For example, plans and specifications for farm buildings, residence buildings of fifteen hundred square feet or less and alterations which meet certain monetary thresholds may be prepared by unlicensed persons. If the service provided by the renderer clearly constitutes the practice of architecture as defined in Section 7301 of the Education Law, but is exempted or excluded under the Education Law from licensing requirements, the renderer's service would not be taxable.

8. Q. A renderer is hired by an architectural firm to provide renderings of plans. Is the amount paid by the firm to the renderer for the renderings taxable?

A. See 7a. above.

9. Q. A renderer prepares and provides to a contractor, for a consideration, copyrighted renderings of interior design, and the contractor does its work from these renderings. Is the transfer of the renderings by the renderer to the contractor subject to sales tax?

A. Yes, the renderings furnished by the renderer to the contractor are used by the contractor and their sale constitutes the sale of tangible personal property (Lenon Sokolowski Models, supra).

10. Q. A rendering is provided to a customer, for a consideration, with a computer disk, or a computer-generated disk, and the disk is returned to the renderer. Is that transaction subject to sales tax?

A. If the transfer of the computer disk is in conjunction with the sale of a reproduction right, for the sole purpose of making the reproduction, the transfer would not be subject to tax. If the customer's use of the computer disk is not limited to reproduction purposes, then the transfer of the disk to the customer for a consideration is considered a sale of tangible personal property that may be subject to tax under Section 1105(a) of the Tax Law, depending on the customer's end use of the disk (see Gentile, Wiener, Penta & Co. CPA's PC, Adv Op Comm T&F, December 27, 1996, TSB-A-96(91)S). The sale of the disk may be exempt from tax if the disk is used by the customer directly and predominantly in the production of tangible personal property for sale, or to produce tax-exempt printed promotional materials. See Sections 1105-B, 1115(a)(12) and 1115(n) of the Tax Law.

11. Q. A rendering which shows a building to be constructed is prepared for an architect or real estate developer for the purpose of printing leasing brochures which are mailed to potential customers. Is the charge by the renderer to the architect or real estate developer for the rendering subject to sales tax?

A. If transfer of possession of the rendering by the renderer to the architect or real estate developer is temporary and for the purpose of reproduction only, after which the rendering is returned unaltered to the renderer, the transfer would not constitute a taxable sale.

If the transfer of possession to the architect or real estate developer is not for the sole purpose of reproduction and constitutes a rental or license to use, the transaction may still be exempt from sales and compensating use tax. Section 1101(b)(12) of the Tax Law defines "promotional materials" as "[a]ny advertising literature, other related tangible personal property . . . and envelopes used exclusively to deliver the same. Such other related tangible personal property includes, but is not limited to free gifts, complimentary maps or other items given to travel club members, applications, order forms and return envelopes with respect to such advertising literature, annual reports, promotional displays and Cheshire labels but does not include invoices, statements and the like." If the rendering in this case is used to produce promotional materials printed for the architect or real estate developer by an outside printer, such a sale would be exempt from New York State and local sales tax, provided the architect or real estate developer gives the renderer a properly completed Form ST-121.2, Certificate of Exemption for Purchases of Promotional Materials, and provided the printed promotional materials otherwise qualify for exemption under Section 1115(n) of the Tax Law. If, however, the rendering is used by the architect or real estate developer

to print its own promotional materials in-house, the purchase of the rendering would be taxable since the architect or real estate developer would be purchasing raw materials and would not be purchasing promotional materials (see TSB-M-97(6)S, supra).

12. Q. A renderer prepares drawings for a manufacturer or contractor to show how an assembled product will look and transfers them to the manufacturer or contractor for a consideration. Is the transfer of the drawings from the renderer to the manufacturer or contractor subject to sales tax?

A. The transfer of original drawings from the renderer to a manufacturer or a contractor which are used by the manufacturer or contractor in rendering their services, e.g., to present a design to clients that clarifies what a product will look like, will constitute the sale of tangible personal property subject to sales tax pursuant to Section 1105(a) of the Tax Law.

However, if the transfer of the drawings by the renderer is for the sole purpose of reproduction only, without the right of the manufacturer or contractor to alter or retouch the same, e.g., a reproduction the manufacturer or contractor would use as a planning device in the rendition of its services, then the transfer will not constitute a taxable sale (see Vignelli Associates, Ltd., supra).

13. Q. Artwork is used as part of a fabric design. Would the transfer of such a rendering from a renderer, for consideration, be subject to sales tax?

A. Provided the artwork is used or consumed by the renderer's customer directly and predominantly to produce tangible personal property for sale, such artwork will be deemed production equipment pursuant to Section 1115(a)(12) of the Tax Law and Section 528.13 of the Sales and Use Tax Regulations and will not be subject to sales tax. The renderer would not be required to collect sales tax provided it receives a properly completed Form ST-121, Exempt Use Certificate, from its customer (see The Design Council Ltd., Adv Op Comm T&F, June 28, 1995, TSB-A-95(23)S). If the customer uses the artwork to produce tangible personal property which will not be sold, the transaction will be subject to both state and local sales tax and the renderer must collect the tax accordingly.

14. Q. A renderer who works with computers is hired by a client to prepare a so-called "3-D" (three-dimensional) computer model of a building or interior, and a digital copy of the data is provided to the client, who will extract information leading to stamped blueprints. Is the transfer of such a rendering for a consideration subject to sales tax?

A. Yes. The use of the model (via the digital copy of data) by a client who renders architectural or design services constitutes a sale of tangible personal property that is subject to the tax imposed under section 1105(a) of the Tax Law, provided the copy is in a tangible format such as a disk (see Lenon Sokolowski Models, supra; Awad Architectural Models, Inc., Adv Op Comm T&F, February 14, 1986, TSB-A-86(9)S).

15. Q. A digital copy of a rendering as described in #14 above is transferred onto a disk and then returned to the renderer on the disk. Would such a transfer of the rendering by the renderer to its customer, for a consideration, be subject to sales tax?

A. Yes, if the renderer is furnishing the disk. See # 14 above.

However, fees received by the renderer for electronically providing a rendering to a customer represent receipts from the sale of an intangible and are not subject to sales tax. Payment of such fees would merely grant the client the right to access the rendering via the digital copy.

16. Q. Short-term or temporary staff are sometimes employed to work in an architect's office on design projects and produce perspective drawings, interior designs, computer models and plans for the architect. The temporaries are not employees for purposes of federal law and are paid as subcontractors. Are the services of the temporary staff performed for the architect subject to sales tax?

A. If the services are performed for the architect by a temporary service contractor and are not subject to tax under Section 1105(c) of the Tax Law, e.g., services which consist of the practice of architecture as defined in Section 7301 of the Education Law or clerical services, then no tax is to be collected on the charge for these services.

However, in the event that drawings, interior designs, computer models or plans are supplied and billed by the temporary service contractor pursuant to a contract with the architect, the sale of such items is subject to sales and compensating use taxes where, for instance, the architect uses them in rendering architectural services to its clients.

17. Q. A client furnishes to a renderer an existing rendering, which is owned by the client, for revision. The rendering may have been produced previously by the same renderer or by a different renderer. Would the performance of such revision by the renderer for the client be taxable?

A. Section 1105(c)(2) of the Tax Law imposes a tax on receipts from the service of "[p]roducing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which services are performed."

The term "processing" is defined in Section 527.4(d) of the Sales and Use Tax Regulations as "the performance of any service on tangible personal property for the owner which effects a change in the nature, shape, or form of the property."

In accordance with the foregoing, receipts from the sale by the renderer for the service of modifying an existing rendering (owned by the purchaser of the service) are subject to tax pursuant to Section 1105(c)(2) of the Tax Law.

18. Q. A renderer produces a rendering for an architect and sells him the limited right to reproduce for \$1,000.00. Two years later, without the renderer's permission, the architect changes the rendering and reproduces it. Would the rendering then be subject to sales tax?

A. A right to reproduce will be deemed to exist only if all of the requirements of Section 526.7(f) of the Sales and Use Tax Regulations are met. If the architect changes the original rendering, he or she has converted the non-taxable reproduction right to a taxable license to use, and compensating use tax is due from the architect upon the use of the tangible personal property. See Section 531.3(a)(2) of the Sales and Use Tax Regulations.

19. Q. A renderer is hired by an architect who is producing designs for a New York State agency. The architect will pay the renderer, but will pass the bill on to the state agency for reimbursement. Is the transaction between the renderer and the architect subject to sales tax?

A. The transfer of the designs from the renderer to the architect is subject to sales tax (see 7(a) above), unless the architect purchases the designs as an agent of the New York State agency. Any sale to or use by New York State or any of its agencies is not subject to sales or compensating use tax pursuant to Section 1116(a)(1) of the Tax Law. An architect acting as an agent of New York State or any of its agencies would likewise not be subject to sales or use tax on its purchases in accordance with Sections 529.2(b) and 541.2(c) of the Sales and Use Tax Regulations.

20. Q. A New York architect hires a renderer who has no place of business in New York State. The renderer's work is delivered, either by hand or by courier, to the architect's office in New York State. Does the architect have a responsibility to pay use tax on the purchase of the rendering?

A. Assuming that the renderer is not a person required to collect tax for purposes of Article 28 of the Tax Law, the architect would be required to pay compensating use tax on the purchase of the rendering.

However, if the renderer makes sales of its renderings, the use of which are subject to tax, and regularly or systematically delivers such property in New York State by means other than the United States mail or common carrier, the renderer is a vendor pursuant to Sections 1101(b)(8)(i)(D) and (iii) of the Tax Law and Section 526.10(a)(5) of the Sales and Use Tax Regulations. As a vendor, the renderer would be personally liable for and be required to collect the sales and use tax on its sales of tangible personal property in this State (see Sections 1132 and 1133 of the Tax Law) and would have to register for the collection of tax as required by Section 1134 of the Tax Law. If the renderer failed to collect the sales tax on the sale of the rendering, the architect would be required to file a sales and use tax return and pay the appropriate tax due. See Section 1133(b) of the Tax Law.

21. Q. In the above example, the renderer performs work in the New York office of a client.

A. The out-of-state renderer, by working in New York, becomes a vendor within the meaning of Section 1101(b)(8)(i)(A) of the Tax Law in this scenario. The renderer is required to register and file sales tax returns with the Department of Taxation and Finance and collect the appropriate New York State or local sales and compensating use taxes on its sales of tangible personal property. If the renderer does not so register and collect sales tax, the client must file a sales and use tax return and pay the appropriate tax due.

22. Q. A rendering is sold to a client in a tax-exempt contract, that is, one which is limited to reproduction rights, and then at a later date the client decides to buy the rendering. Are taxes owed only on the new portion of the sale, or on the entire transaction?

A. The sales tax is a "transactions tax" and liability for the tax occurs at the time of the transaction. The taxed transaction is an act resulting in the receipt of consideration for the transfer of title and/or possession to property from one person to another. See Section 525.2(a)(2) of the Sales and Use Tax Regulations. The sale of reproduction rights by the renderer is not a sale within the meaning of Sections 1101(b)(4)(i) and (5) of the Tax Law since there is no transfer of title or possession (other than temporary) of the rendering from the renderer to the client. Accordingly, no sales tax liability would arise from such a transaction. However, where as part of the transaction title or possession is transferred to the client for a consideration, i.e., the original contract is modified, the entire transaction will constitute a retail sale within the meaning of Sections 1101(b)(4)(i) and (5) of the Tax Law and the receipts therefrom will be subject to tax under Section 1105(a) of the Tax Law.

If after the expiration of a tax-exempt contract the renderer and the client enter into a new contract for the outright sale of the rendering, such transaction is subject to sales tax imposed upon the amount of the sales price specified in the new contract, pursuant to Sections 1105(a) and 1101(b)(3) of the Tax Law.

23. Q. A nontaxable transfer of a rendering is made to a client under a contract for the specific purpose of reproduction only. It is later discovered that the client changed the image and used it. Would that make the transaction taxable?

A. See Question 18. If the client changes the original rendering while it is in his possession, he has converted the non-taxable reproduction right to a taxable license to use, and compensating use tax is due upon the use of the tangible personal property.

DATED: July 1, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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