

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

TSB-A-98(48)S  
Sales Tax  
July 31, 1998

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980212A

On February 12, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Architectural/Engineering Investigations, P.C., 1930 Stump Road, Marcellus, New York 13108-9746. Petitioner, Architectural/Engineering Investigations, P.C., submitted additional information with respect to the Petition on May 26, 1998.

The issue raised by Petitioner is whether Petitioner should be collecting sales tax from its customers when Petitioner renders certain services.

Petitioner submits the following facts as the basis for this advisory opinion.

Petitioner is a professional corporation formed pursuant to Sections 402 and 1503 of the Business Corporation Law. Petitioner consists of two shareholders, Seymour Ribyat, P.E. (Professional Engineer) and A. Keith Turner, R.A. (Registered Architect). Both shareholders are licensed professionals. Petitioner provides the service of research and analysis on problems relating to architecture and structural engineering for the legal profession. The research and analysis consists of studying the problem and exploring literature on the subject, preparation of presentation drawings, writing detailed reports and testifying in court as an expert witness.

Petitioner submitted a sample of a typical report that was prepared for a client/attorney related to a case dealing with a personal injury accident. The report consists of an analysis of the area where the accident took place and a conclusion was reached with respect to whether the accident area represented a safety hazard. The report is accompanied by a drawing or sketch of the accident area which is meant to help the reader understand the details and to support the conclusion reached.

**Applicable Law**

Section 1105(a) of the Tax Law imposes the sales tax on the "receipts from every sale of tangible personal property, except as otherwise provided in this article."

Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services. However, architectural and engineering services are not among the enumerated services.

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Opinion

In R.H. McDermott Corp., Adv Op Comm T&F, March 2, 1988, TSB-A-88(22)S, it was concluded that the furnishing of technical advice by a licensed professional engineer is not deemed to be the sale of tangible personal property or the sale of an enumerated service even if a written report is furnished as an incident to the engineering service being performed. Such a professional service is outside the scope of the sales tax.

Also, in EMCON, Adv Op Comm T&F, December 16, 1996, TSB-A-96(79)S, it was concluded that the "rendering of technical advice by a licensed professional engineer, the charge for said services, including amounts charged for copies of reports, maps or plans furnished as an incident to these services, is not subject to sales or use tax.... In the event the photocopies are supplied and billed pursuant to a separate contract or agreement apart from the contract or agreement for the sale of the engineering service, then the charges for such photocopies will be subject to sales and compensating use tax, although the charges for the engineering service will not be subject to said tax."

The services provided by Petitioner are performed by a licensed architect and a licensed engineer. The services consist of research and analysis relating to architecture and structural engineering. Since these services are not included in the enumerated taxable services under Section 1105(c) of the Tax Law, the receipts of Petitioner derived from the provision of these services are not subject to sales tax. Also, in accordance with R.H. McDermott Corp. and EMCON supra, amounts charged for the preparation and furnishing of presentation drawings and copies of reports are not subject to sales tax to the extent that the drawings and copies of reports are furnished as an incident to the non-taxable service being provided.

However, to the extent, for example, that drawings are prepared and furnished by Petitioner to a customer pursuant to a separate contract or agreement apart from the contract or agreement for the sale of a non-taxable service, then the charge for the drawing would be subject to sales tax as a receipt from the sale of tangible personal property.

DATED: July 31, 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.