

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

TSB-A-99(28)S
Sales Tax
May 19, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990126A

On January 26, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Greenwich Building Consultants, LLC, 254 Mill Street, Greenwich, Connecticut, 06830.

The issue raised by Petitioner, Greenwich Building Consultants, is whether project management consulting services are subject to sales tax.

Petitioner submitted the following facts as the basis of this Advisory Opinion.

Petitioner provides project management consulting services to corporations or individuals in the high end residential, commercial, and hospitality market for land development and building projects. The breadth of review, reporting, oversight and management can range from initial planning and design through construction to occupancy of the project. The types of projects include renovations, additions and new construction for residential or commercial use. The types of services may include onetime reports of analysis and recommendations, coordination and scheduling of project participants, or direct management of all contracted parties as the agent for the project owner ("Owner"). Contracts for service normally proceed from extensive analysis and reporting in the pre-construction state to direct management of design and construction. Petitioner never contracts with project participants, such as designers, architects or contractors, directly, but as an agent for the Owner will manage all parties contracted by the Owner. Verbal and written reports are provided to clients on a variety of issues, including periodic routine project status reports for the life of the assignment. All reports furnished to a client are confidential and are not furnished to other clients. Petitioner may contract directly with an Owner, or with a corporation or partnership controlled by the Owner. At no time are any payments made from Petitioner to any contractors or other project participants. Petitioner makes no purchases of tangible personal property or services for or on behalf of its clients or sales of tangible personal property to its clients, and performs none of the design, construction, interior decorating or other project services.

Petitioner provided a sample contract. Article 2 of the contract, which outlines the scope of services provided to clients, provides, in part:

ARTICLE 2 - SCOPE OF SERVICES

2.1 Owner's Agent

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GBC shall be the agent of the Owner with regard to all duties and responsibilities within the scope of services set forth herein ... GBC shall provide advice to the Owner as a consultant in the form of regularly scheduled reports and recommendations, verbal or written, as well to act in place of the Owner in providing management and direction to the Project Team.

* * *

2.3 Coordination and Management of Project Work

2.3.1 GBC shall coordinate the efforts and activities of the entire Project Team with respect to the Project. To this end as required, GBC shall initiate, schedule and lead meetings of the Design Team, Construction Manager or Contractor, and/or any consultant or subcontractor deemed necessary for any such meeting ... The purposes may include, but are not limited to, general status and direction, special requirements, construction, scheduling and budgeting and/or to review the status of design, procurement and/or construction issues.

2.4 Project Schedule

GBC shall provide to the Owner for review on a monthly basis an updated Project Schedule based upon actual and projected design and construction progress....

2.5 Review of Staffing of Design Team

GBC shall continually review and monitor the Design Team organization to ensure that personnel employed and approved for the Project are sufficient to meet the Project schedule and are performing to the satisfaction of GBC and the Owner....

GBC shall monitor the development of all design to monitor compliance with the Project Control Budget and Schedule....

2.6 Review of Construction Manager and Subcontractor Staffing

GBC shall continually review and monitor the Construction Manager's or Contractor's organization to ensure that personnel employed and Subcontractors approved for the Project are sufficient to meet the Project Schedule...

2.7 Quality Control

GBC shall monitor construction of the Project on an on-going basis for quality control procedures ... GBC's performance of this responsibility may include, but not be limited to, the following: (1) reviewing all test and inspection reports with respect to the Project; (2) in company with the Construction Manager, meeting with Subcontractors and vendors and suppliers to verify that construction materials and equipment are of the proper type and quality; and (3) inspecting the Project periodically, in conjunction with the Design Team, to determine whether the quality of workmanship is in accordance with the Design Documents....

* * *

2.9 Construction Cost Control

On a monthly basis:

GBC shall review the Construction Manager's cost itemization and proposed payment schedule for that month, including all invoices. GBC shall verify the appropriateness of each invoice or requested payment based upon the Project Budget, the Project Schedule and actual progress of construction, and shall approve or disapprove each individual item. The GBC recommendation shall be forwarded to the Owner for payment via the Architect for Certification...

GBC shall review the invoices of the Design Team for compliance with respective budgets and schedule. A GBC recommendation shall be forwarded to the Owner for payment....

* * *

2.11 Procurement of Materials and Labor

GBC shall continually monitor the manner in which Construction Manager procures construction materials, supplies, equipment and labor for the Project...

* * *

2.14 Construction Means and Methods

Except as otherwise specifically provided in this Agreement, GBC shall not have control over, or be in charge of, and shall not be responsible for construction means, methods, techniques, sequences or procedures or for safety procedures or programs implemented by the Construction Manager, any Subcontractor or any other party retained by the Owner to perform work on the Project... GBC shall not have

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control over or charge of and shall not be responsible for acts or omissions of the Construction Manager, Subcontractors, the Design Team, their agents and employees, or any other party performing work or services in connection with the Project.

Applicable Law

Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services.

Opinion

Petitioner is providing consulting and coordinating services in the management of parties engaged by the Owner of real property for renovations and construction of such property. Petitioner is not providing any construction, design, interior decorating or other project services. Petitioner is not making purchases of tangible personal property for or on behalf of clients or sales of tangible personal property to clients. Petitioner's services, as described above, including the incidental furnishing of confidential project status reports, are not included among the enumerated services subject to sales tax under Section 1105(c) of the Tax Law. Accordingly, Petitioner is not required to collect sales tax on charges for its services. (See Refuse and Environmental Systems, Adv Op Comm of T & F, December 29, 1997, TSB-A-97(85)S).

DATED: May 19, 1999

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

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