

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

TSB-A-99(9)S
Sales Tax
March 1, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980922A

On September 22, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Mitchell Eichen, Perelson Weiner, One Dag Hammarskjold Plaza, New York, New York 10017. Petitioner, Mitchell Eichen, provided additional information pertaining to the petition on November 12, 1998.

The issue raised by Petitioner is whether its client's services are subject to sales and use tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner's client is in the business of performing design and architectural services. Petitioner's client performs space planning and consulting services consisting of:

- 1) Determination of space requirements.
- 2) Detailed office layouts and configurations.
- 3) Design development entailing three dimensional character detail of office space including architectural materials, details and lighting.
- 4) Preparation of detailed working drawings and specifications setting forth the detail and standard of construction.
- 5) Review, seal, and filing with government agencies of plans.
- 6) Analysis and advice regarding contractor/vendor bids.
- 7) On site monitoring and coordination of contractors and vendors.
- 8) Inspection and sign-offs, as required by local laws or ordinances, that the construction is consistent with the architectural plans.
- 9) Selection and specification of personalty, furniture, furnishings and appointments. (Furniture and furnishings are directly purchased by clients from third party dealers and distributors.)

Petitioner's client does not collect sales tax on any of the enumerated services except item 9. Petitioner does not raise an issue concerning the taxability of item 9.

For business reasons, Petitioner's client is considering restructuring its operations such that these services will be provided between two entities: an LLC which will provide the services described above as numbers 1-4, 6-7, and 9, and an LLP, licensed as an architectural firm, which will provide services 5 and 8. Petitioner's client will sell its business to the LLC. The LLC will have licensed architects on its staff, although the LLC will not be licensed as an architectural firm.

Although there will be some common ownership between Petitioner's client, the LLC, and the LLP, the underlying owners and percentages of ownership will not be identical between any of such entities.

All services to be provided by both the LLC and the LLP for a given engagement will be provided as part of the same contract.

Applicable Law

Section 1105(c) of the Tax Law imposes a tax on the following:

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

* * *

(7) Interior decorating and design 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.

New York City's tax on interior decorating and design services was repealed by Chapters 297 and 298 of the Laws of 1995, effective December 1, 1995. See Repeal of New York City's Sales Tax on Interior Decorating and Design Services, TSB-M-95(13)S, December 1, 1995.

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, 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 8303 of Article 161 of the Education Law defines the practice of interior design, in part, as follows:

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[T]he preparation and administration of interior design documents (including drawings, schedules and specifications) which pertain to the planning and design of interior spaces including furnishings, layouts, fixtures, cabinetry, lighting, finishes, materials, and interior construction not materially related to or materially affecting the building systems, all of which shall comply with applicable laws, codes, regulations and standards. The scope of work described herein shall not be construed as authorizing the planning and design of engineering and architectural interior construction as related to the building systems, including structural, electrical, plumbing, heating, ventilating, air conditioning or mechanical systems and shall not be construed as authorizing the practice of engineering or architecture as described in article one hundred forty-five of this title. The interior design plans as described above are not to be construed as those required to be filed with local municipalities or building departments as required by the state education law regulating the practices of architecture or engineering.

Important Notice N-90-16 states in part that:

Interior decorating and design services include, but are not limited to: the preparation of layout drawings; furniture arranging; design and planning of furniture, fixtures and other furnishings which are not permanently attached to a building or structure; selection, purchase and arrangement of surface coverings, draperies, furniture, furnishings and other decorations; or any similar service.

Architects and engineers are also required to collect this tax when the services they provide fall within those generally regarded as interior decorating and design.

OPINION

While Section 1105(a) of the Tax Law imposes a sales tax on retail sales of tangible personal property, with the exception of certain enumerated exemptions, Section 1105(c) taxes only certain enumerated services. Section 1105(c)(7) provides that interior decorating and design services are subject to sales tax unless the design services are performed by licensed architects or engineers and constitute the practice of architecture or engineering as defined in the State Education Law. When an architect or engineer performs an interior design service that does not come within the Education Law's definition of architecture or engineering, sales tax must be collected on such services.

Services involving the preparation of drawings which require a licensed architect or engineer as provided by the Education Law, and are rendered by a licensed architect or engineer, are not subject to sales or use tax. See Morton Coren, Adv Op Comm T & F, December 29, 1997, TSB-A-97(82)S. If the services involving the preparation of drawings are rendered by an unlicensed individual under the general supervision of a licensed architect or engineer who analyzes, reviews

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and certifies the drawings, and the drawings are required by the Education Law to be certified by an architect or an engineer, they are not subject to sales or use tax. See Morton Coren, *supra*. The development by an unlicensed business of architectural designs which culminate in the preparation by the unlicensed business of detailed working drawings, i.e., blueprints, from such designs, are not subject to tax if the designs and drawings are prepared as part of the same contract for the architectural design services and the working drawings are reviewed and sealed by a licensed architectural firm. See Edward B. Rusin, Adv Op Comm T & F, April 22, 1985, TSB-A-85(6). Accordingly, the planning and design services listed as numbers 1-3 above, and the preparation of detailed working drawings (number 4), by the LLC are not subject to tax if the planning and design services are an integral part of the preparation of the drawings, and the drawings are reviewed and sealed for a given engagement by the LLP, a licensed architectural firm, as part of the same contract.

Analysis and advice regarding contractor/vendor bids (number 6) and on site monitoring and coordination of contractors and vendors (number 7), are not enumerated taxable services under Section 1105(c) of the Tax Law. The review, seal and filing of plans (number 5), and inspections and sign-offs required by local laws or ordinances (number 8) are considered to be a part of the architectural service provided by the LLP. (See Section 7301 of the Education Law)

DATED: March 1, 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.