

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

TSB-A-96 (12)S
Sales Tax
February 28, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S950928A

On September 28, 1995, a Petition for Advisory opinion was received from Whitestone Services, Inc., 20-13 149 Street, Whitestone, New York 11357.

The issue raised by Petitioner is whether receipts from massage services performed by an individual, either as a sole practitioner, as an employee of a corporation or employee/ stockholder/ officer of a corporation, are subject to the New York City or New York State sales tax.

Petitioner makes the following submission of facts. Petitioner's client provides massage services and is licensed to practice massage by the State Education Department under Title VIII of the Education Law. This individual is a graduate of a school of massage (the Swedish Institute), with a program registered with the New York State Education Department. The individual is not a licensed nurse, osteopath, physiotherapist, chiropractor, podiatrist, or other licensed medical professional.

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

Section 1105(c) of the Tax Law imposes New York State sales tax on the receipts from the sale of certain enumerated services. Massage services are not included within the services enumerated under Section 1105(c) of the Tax Law. Receipts from the sale of massage services, therefore, are not subject to the New York State sales tax, or to local sales taxes imposed by localities outside New York City. Carapan, Inc., Adv Op comm T&F, June 21, 1993, TSB-A-93(40)S; Walter R. Zernis, L.M.T.,DBA Bodvcare, Adv Op Comm T&F, September 19, 1994, TSB-A-94(44)(S).

The massage services provided by Petitioner's client are, however, subject to the tax imposed by New York City pursuant to the authority of Section 1212-A(a)(2) of the Tax Law. Even though Petitioner's client is engaged in the profession of massage and is licensed under Title VIII of the Education Law, the services that he or she provides are not medical in nature as are the services provided by the categories of professionals listed in Section 1212-A of the Tax Law and Section

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11-2002(h) of the New York City Administrative Code. Therefore, Petitioner's client is not providing "similar services" as intended by these sections. Accordingly, receipts from sales of the client's services are subject to the New York City sales tax. Carapan, Inc., Walter R. Zernis, supra. This is true whether the client is a sole practitioner, or an employee, stockholder or officer of a corporation.

Dated: February 28, 1996

/s/
DORIS S. BAUMAN
Director
Technical Services Bureau

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