

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

TSB-A-97(48)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970513D

On May 7, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Peter S. Cotsis, 106 Long Vista Lane, Chester, New York 10918.

The issue raised by Petitioner, Peter S. Cotsis, is whether receipts from the sales of his patent drafting service are subject to sales tax or if this service is considered part of a nontaxable legal service.

Petitioner is a patent draftsman whose primary service is to create formal drawings for sale to patent attorneys. These drawings are then submitted by the attorneys to the United States and foreign patent offices with applications for patents.

Applicable Law and Regulations

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

When used in this article for the 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

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

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

Section 526.6(c)(7) of the Sales and Use Tax Regulations provides:

(7) Tangible personal property purchased for use in performing a service not subject to tax is not purchased for resale.

Section 526.8(a) of the 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

Opinion

Petitioner's formal drawings for submission by attorneys as part of the patent application process constitute tangible personal property. Accordingly, receipts from Petitioner's patent drafting service that results in the retail sale of these drawings to Petitioner's patent attorney clients are subject to sales tax. (See, Awad Architectural Models, Inc., Adv Op Comm T&F, February 14, 1986, TSB-A-86(9)S; Leslie H. Barker, Adv Op Comm T&F, June 23, 1994, TSB-A-94(26)S.) Although formal drawings are essential to certain patent applications and the United States Patent and Trademark Office recommends, for example, in its Guide to Filing a Design Patent Application (Washington, D.C. [1996]; <http://www.uspto.gov>) that an applicant for a patent retain the services of a professional patent draftsman, this specialized service is not considered to be part of a patent attorney's practice of law, nor is it required that the applicant be represented by counsel or otherwise in such a matter.

It is noted, Section 526.6(c)(7) of the Sales and Use Tax Regulations provides that tangible personal property purchased for use in performing a service not subject to tax is not purchased for resale. Petitioner's patent attorney clients are performing a service that is not subject to sales tax. Thus, the attorneys are not purchasing Petitioner's drawings for resale within the meaning and intent of Section 1101(b)(4) of the Tax Law.

DATED: July 23, 1997

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

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