

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

TSB-A-97(82)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S961113A

On November 13, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Morton L. Coren, P.C., 638 Meadow Court, Westbury, New York 11590-5925.

The issue raised by Petitioner, Morton L. Coren, P.C., is whether the following services are interior decorating and design services subject to the sales and compensating use tax imposed under Sections 1105(c)(7) and 1110 of the Tax Law:

1. Services involving the preparation of drawings by a licensed architect or professional engineer that are required to be prepared by a licensed architect or engineer.
2. Services described in Number 1 that are rendered by an unlicensed individual under the general supervision of a licensed architect or engineer who analyzes and reviews the drawings. The services may not require a licensed architect or engineer because the project costs less than \$20,000. Petitioner states that the Education Law provides that projects which cost less than \$20,000 do not require the services of an architect or professional engineer.
3. An unlicensed individual prepares drawings of the interior of a building. The drawings show walls, electrical service, heating, ventilation and air conditioning, plumbing, sprinklers and ceilings. (The drawings may be of existing walls or new walls.)
4. The same services rendered in number 3, but also including engineering specifications for type and fire rating of floor and wall coverings.
5. The preparation of interior plans of buildings for landlords. The plans describe the space and are used by the landlords to rent the space. The drawings may include the expiration dates of the leases.

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

Petitioner's client is a company that renders services and has an office in New York City. There are two partners who meet the education requirements for licensure as architects; however, only one is a licensed architect in New York.

Petitioner's client provides architectural and interior design services for relocations and renovations in New York City and the surrounding counties. The company has built on its reputation of extensive architectural, design and project management experience. Petitioner's client offers a broad range of services including: needs assessments, space studies, design development, construction document preparation, project administration, finishes selection, and post-construction management. It also maintains rental books of rental premises for landlords.

Approximately 90% of the services provided involve the preparation, review, adoption and submission of architectural drawings to clients, contractors and governmental agencies. The remaining 10% involves the selection of finishes and furniture for clients. In cases where both types of services are rendered to the same client, separate invoices are sent for the two different services.

APPLICABLE LAW

Section 1105(a) of the Tax Law imposes a tax upon:

The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1105 (c) (7) of the Tax Law imposes a tax upon:

Interior decorating and design services and designing 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 forgoing, 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 7201 of the Education Law defines the practice of engineering as follows:

The practice of the profession of engineering is defined as performing professional service such as consultation, investigation, evaluation, planning, design or supervision of construction or operation in connection with any utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the safeguarding of life, health and property is concerned, when such service or work requires the application of engineering principles and data.

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, groups 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.

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 all sales of tangible personal property with the exception of certain enumerated exemptions, Section 1105(c) taxes only those services specifically subjected to tax. 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.

Petitioner's questions are answered in the order in which they were submitted.

1. 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 a professional engineer are not subject to sales and compensating use tax.

2. If the services performed in Answer Number 1 are rendered by an unlicensed individual under the general supervision of a licensed architect or engineer who analyzes, reviews and certifies the drawings, and the drawings are required by

the Education Law to be certified by an architect or engineer, they are not subject to sales and compensating use tax. Projects performed by an unlicensed individual that consist of the practice of architecture or engineering and that do not require the services of a licensed architect or engineer only because the projects are under a certain statutory amount, are also not subject to tax.

3. Where an unlicensed individual prepares drawings of the interior of a building that shows walls, electrical service, heating, ventilation and air conditioning, plumbing, sprinklers and ceilings, the sale of the drawings is subject to sales and compensating use tax under Section 1105(a) of the Tax Law. If, however, the drawings are prepared as part of a service performed under the general supervision of a licensed architect or engineer who analyzes, reviews and certifies the drawings, and the drawings are required by the Education Law to be certified by an architect or engineer, the charge for this service would not be subject to sales and compensating use tax.

4. Assume that the drawings in Answer Number 3 do not require the certification of a licensed architect or engineer and are subject to sales and compensating use tax. These drawings will still be taxable if they include specifications for type and fire rating of floor and wall coverings. If such specifications are provided as part of an engineering service that does require, under the Education Law, the certification of a licensed engineer, the charge for the engineering specifications will not be taxable where it is separately stated on the customer's invoice and could be separately purchased. If the services in Answer Number 3 do require the certification of a licensed architect or engineer, their nontaxable status would not be affected by the inclusion of these engineering specifications.

5. Sales of interior plans which describe rental space and are used by landlords to rent the space are not design services but are sales of tangible personal property that are subject to the tax imposed under section 1105(a) of the Tax Law. It makes no difference whether or not the plans include lease expiration dates. (See Paul Carucci & Co. Tax Consultants, Adv Op Comm T & F, March 19, 1992, TSB-A-92(26)S) The combined rate of tax under Sections 1105, 1107 and 1109 of the Tax Law applicable to sales of tangible personal property in New York City is 8 1/4%.

In the case of taxable and nontaxable items sold together, the nontaxable items may be purchased not subject to tax where the invoice breaks down the items and the items may be purchased separately.

DATED: December 29, 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.