

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

TSB-A-96 (31)S
Sales Tax
May 22, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S960125A

On January 25, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from J. P. Molyneux Studio Ltd., 29 East 69th Street, New York, New York 10021.

The issue raised by Petitioner, J. P. Molyneux Studio Ltd., is whether the fee charged by an interior design firm in the City of New York for work performed and delivered in the City of New York is subject to State and local sales and use taxes.

Petitioner submits the following facts as the basis for this Advisory Opinion. A design firm is hired by its client to purchase an object. The design firm is not acting as agent for the client, but purchases the items at its discretion in providing its interior design service. The cost to the client is the net amount due by the designer to the manufacturer, plus an agreed upon percentage. The percentage represents the designer's fee for providing the service of interior design.

Section 1105(a) of the Tax Law imposes sales tax upon the receipts from every retail sale of tangible personal property. Receipts are defined in Section 1101(b)(3), in part, to mean "[t]he amount of the sale price of any property and the charge for any service taxable under this article. . ."

Section 1105(c)(7) of the Tax Law imposes sales tax on the receipts from the following:

(7) Interior decorating 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 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.

Chapters 297 and 298 of the Laws of 1995 amended Articles 28 and 29 of the Tax Law, and the Administrative Code of New York City, to repeal the 4 percent sales and compensating use tax imposed by New York City pursuant to the authority of Section 1212-A(f)(2) of the Tax Law on interior decorating and design services, effective December 1, 1995. Chapters 297 and 298 amended

TSB-A-96 (31)S
Sales Tax
May 22, 1996

Section 1107 of the Tax Law to provide that the 4 percent sales and compensating use tax imposed by this section in New York City does not apply to interior decorating and design services. Currently, only the 4 percent Statewide sales and compensating use tax imposed by Sections 1105 and 1110 of the Tax Law, and the 1/4 percent sales and compensating use tax imposed by Section 1109 of the Tax Law within the Metropolitan Commuter Transportation District, apply to interior decorating and design services performed in New York City.

Technical Services Bureau Memorandum, TSB-M-95(13)S, December 1, 1995, entitled Repeal of New York City's Sales Tax on Interior Decorating and Design Services, states in part:

Interior decorating services that are performed in conjunction with the sale of tangible personal property by the decorator to the customer will be subject to tax if the tangible personal property associated with the decorating service is transferred or delivered to the customer, or the customer's agent or designee, in New York State. In New York City, the portion of the bill that constitutes the sale of tangible personal property is subject to the combined state and local (8-1/4%) sales and use tax rate. If the interior decorating and design services are separately contracted for and separately itemized on the bill or invoice given to the customer, the charges for the interior decorating and design services are only subject to the New York State (4-1/4%) tax, not the local New York City tax.

In T.K. Design, Inc., Dec St Tx Comm, December 4, 1985, TSB-H-85(213)S, the State Tax Commission determined that the entire fee charged by the petitioner to its client for purchasing items in providing its architectural and interior design services constituted receipts from the sale of the tangible personal property and, therefore, was subject to sales and use taxes.

In this case, a design firm is hired by its client to purchase an object. The design firm is not acting as agent for the client. The cost to the client for the object is the net amount due by the designer to the manufacturer, plus an agreed upon percentage as fee for its service. Pursuant to T. K. Design, Inc., *supra*, the entire fee charged by an interior design company for purchasing items in providing its design services constitutes receipts from the sale of the tangible personal property and, therefore, is subject to sales or use tax pursuant to Section 1105(a) of the Tax Law. Accordingly, in this case the total amount charged by the design firm to the client for the sale of the object, including the additional percentage figure, is subject to the combined state and local (8-1/4%) sales and use tax rate in New York City. If interior decorating and design services are separately contracted for and separately itemized on the bill or invoice given to the customer, the charges for the interior

TSB-A-96 (31)S
Sales Tax
May 22, 1996

decorating and design services are only subject to the New York State (4-1/4%) tax, not the local New York City 4% tax. See TSB-M-95(13)S.

DATED: May 22, 1996

/s/
Doris S. Bauman
Director
Technical Services Bureau

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