

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

TSB-A-91(76) S
Sales Tax
December 19, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910805A

On August 5, 1991 a Petition for Advisory Opinion was received from Hafner Associates, Inc., 9 South Goodman Street, Rochester, New York 14607.

The issue raised by Petitioner, Hafner Associates, Inc., is whether its sale of an interior design service may qualify as a capital improvement to real property.

Petitioner is an interior design and space planning firm whose services are subject to tax under Section 1105(c)(7) of the Tax Law. Petitioner's services include the evaluation and layout of a home or office, lighting design, elevations of millwork and built-in cabinetry, finishes and furnishings specifications, finish schedules and site visits/project management. The layout, lighting design, elevations etc. are presented on blueprints.

Section 1105(c)(3) imposes a tax upon:

Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

* * *

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter, and. . . (Emphasis supplied)

Section 1150(c)(7) of the Tax Law imposes sales tax upon:

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

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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.

In order to meet the requirements for exclusion from sales tax as a capital improvement, tangible personal property must be installed as an addition or capital improvement to real property in accordance with the meaning and intent of Section 1105(c)(3)(iii) of the Tax Law. Design services are not tangible personal property nor are they installed. In addition, Section 1105(c)(7) of the Tax Law contains no exclusion pertaining to capital improvements. Thus, Petitioner's design services are properly subject to sales tax even though the resulting installation may constitute a capital improvement.

DATED: December 19, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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