

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

TSB-A-96 (32)S
Sales Tax
May 23, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S960220A

On February 22, 1996, a Petition for Advisory Opinion was received from Home Insulation & Supply Inc., 154 Cemetery Road, Lancaster, New York 14086.

The issue raised by Petitioner, Home Insulation & Supply Inc, is whether the installation of permanently attached closet shelving in new homes and commercial building applications results in a capital improvement to real property.

Petitioner indicates that the shelving is cut to exact size of each individual closet for each individual home or office. This shelving is permanently anchored to interior wall or concrete finish using screws, nails, or other anchoring hardware meant to withstand heavy loads and vibration and to last the life of the structure.

Section 1101(b)(9)of the Tax Law defines "capital improvement" as follows:

- (i) An addition or alteration to real property which:
 - (A) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and
 - (B) Becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and
 - (C) Is intended to become a permanent installation.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.-- ... there is hereby imposed and there shall be paid a tax ... upon:

* * *

- (c) The receipts from every sale, except for resale, of the following services:

* * *

- (3) 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;

Section 527.7(a)(3)(i) of the Sales and Use Tax Regulations provides:

A capital improvement is an addition or alteration to real property:

- (a) which substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property;
- (b) which becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and
- (c) is intended to become a permanent installation.

In this case, Petitioner states that the shelving is cut exactly to the size of the closet and is permanently attached, by the use of anchoring devices such as screws, nails or other anchoring hardware, to withstand heavy loads and vibrations and to last the life of the structure. In order for the installation to be exempt from sales tax it must meet all three criteria of a capital improvement as described in Section 1101(b)(9) of the Tax Law and Section 527.7(a)(3) of the Sales and Use Tax Regulations.

Shelving installed in a new home or commercial building in conjunction with the construction of the home or commercial building is deemed to be part of the capital improvement project. Accordingly, the installation of shelving in a new home or commercial building is not subject to sales tax, pursuant to Section 1105(c)(3)(iii) of the Tax Law.

However, the installation of shelving in an existing office or commercial building, in the manner described above, may not result in a capital improvement. The mere anchoring of shelving to an interior wall does not necessarily result in a capital improvement. We could foresee many instances where shelving anchored to sheetrock by means of plastic anchors, molly bolts or toggle bolts can be removed merely by unscrewing the brackets and then pushing the anchors through the Sheetrock. Removal of the shelving in these instances would not seem to cause material damage to the real property or the shelving itself, as provided in Section 1101(b)(9)(i)(B) of the Tax Law. Therefore, it would be necessary to review the specific manner of installation in each case to determine whether a capital improvement results.

Petitioner is not required to collect tax on the installation of shelving when it accepts and executes in good faith a properly completed certificate of capital improvement, Form ST-124, from its customer within 90 days after completion of the installation. A certificate is accepted in good

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faith when the contractor has no knowledge that it is false. See Section 1132(c) of the Tax Law and Section 532.4 of the Sales and Use Tax Regulations.

DATED: May 23, 1996

/s/
Doris S. Bauman
Director
Technical Services Bureau

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