

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-06(19)S
Sales Tax
June 26, 2006

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S060118A

On January 18, 2006, the Department of Taxation and Finance received a Petition for Advisory Opinion from Fraser/Gold Carpet Corp., 201 East 56th Street, New York, New York, 10022.

The issue raised by Petitioner, Fraser/Gold Carpet Corp., is whether a particular installation of carpeting on a floor qualifies for exemption from sales tax as a capital improvement to real property.

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

Petitioner sells and installs wall-to-wall carpeting. Petitioner's customer is the lessee of the fourth floor of an existing 20-plus-story building. As part of a renovation project initiated by Petitioner's customer, the interior walls on the fourth floor of the building were removed by a general contractor and the floor was stripped down to the concrete. A top coat was applied to level the floor. New walls were erected by the general contractor. Petitioner was separately contracted by its customer to sell and install a glued-down carpet as part of the renovation of the fourth floor of the building.

Applicable law and regulations

Section 1101(b)(9) of the Tax Law defines *capital improvement*, in part, as:

(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.

* * *

(iii) Notwithstanding the provisions of subparagraph (i) of this paragraph: (A) Floor covering, such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile and vinyl tile, installed as the initial finished floor covering in new

construction or a new addition to or total reconstruction of existing construction shall constitute an addition or capital improvement to real property, property or land; and

(B) Floor covering, such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile and vinyl tile, installed other than as described in clause (A) of this subparagraph shall not constitute an addition or capital improvement to real property, property or land.

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax . . . upon:

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

* * *

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

* * *

(3) Installing tangible personal property . . . or maintaining, servicing or repairing tangible personal property . . . 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 541.14 of the Sales and Use Tax Regulations provides, in part:

Floor covering. (a)(1) The installation of floor covering is subject to sales tax, regardless of the method of installation or the surface over which the floor covering is installed, unless the installation qualifies for exemption under subdivision (b) of this section.

(2)(i) The term *floor covering* includes carpet, carpet tile, carpet padding, linoleum and vinyl roll floor covering, linoleum tile, vinyl tile and other similar floor coverings but not area rugs and the like.

(ii) The term floor covering does not include flooring such as wood flooring, ceramic tile, terrazzo, marble, concrete or other similar flooring. Accordingly, the provisions of this section do not apply to the installation of flooring. See section 527.7 of this Title for the rules to determine whether such flooring qualifies as a capital improvement.

(b)(1) The installation of floor covering is exempt from sales tax only if the following criteria are met:

(i) the installation must be of the initial finished floor covering; and

(ii) the installation must be made in:

(a) the new construction of a building or structure; or

(b) the new construction of an addition to an existing building or structure;
or

(c) the total reconstruction of an existing building or structure.

(2) For purposes of this Subchapter:

(i) *New construction of a building or structure* means the original construction of a building or structure that did not exist before such construction.

(ii) *New construction of an addition to an existing building or structure* means the original construction of a new room, wing or other discrete, substantial unit of a building or structure which enlarges the exterior of the existing building or structure.

(iii) *Total reconstruction of an existing building or structure* means the complete rehabilitation or replacement of most of the major structural elements of an existing building or structure, such as the roof, ceiling trusses, floor joists, walls, support columns, support beams, girders and the foundation.

(3) Floor covering installed as the initial finished floor covering shall be deemed to be installed in new construction, a new addition or total reconstruction where it is installed within six months of the date of completion of the new construction, new addition or total reconstruction.

* * *

Example 6: A tenant enters into a bare-wall lease to rent the entire third floor of a new office building. The tenant has the right to finish the third floor of the

building to suit its needs. When the lease terminates, all improvements made by the tenant will become the property of the owner of the building. As part of finishing the premises, the tenant arranges with a building contractor for the installation of a suspended ceiling, construction of offices, paneling the walls, installation of complete electrical, plumbing, heating and air-conditioning systems and for the installation of wall-to-wall carpet. The new ceiling, offices, paneling and electrical, plumbing, heating and air-conditioning systems qualify as capital improvements in accordance with section 527.7 of this Title. The new wall-to-wall carpet qualifies as a capital improvement in accordance with subdivision (b) of this section because it is the installation of the initial finished floor covering in new construction.

Example 7: Assume that the tenant in Example 6, in the tenth year of the lease, hires a contractor to renovate the premises. The existing ceiling, overhead lighting, wall paneling and carpet are to be replaced. The new ceiling, lighting and paneling qualify as capital improvements in accordance with section 527.7 of this Title. However, the charge by the contractor for the new carpet and its installation is subject to sales tax because the renovation is not new construction, an addition or a total reconstruction.

Opinion

Petitioner sells and installs wall-to-wall carpeting. Petitioner's customer is the lessee of the fourth floor of an existing 20-plus-story building.

A general contractor was engaged by Petitioner's customer to demolish and replace all walls and to strip, resurface and level the concrete floor on the fourth floor of the building. Whether these improvements as described meet the conditions set forth in section 1101(b)(9)(i) of the Tax Law to qualify as capital improvements to real property is not at issue in this Advisory Opinion.

The requirements for installations of floor covering (e.g., carpeting) to become a capital improvement are statutorily different than other installations. See section 1101(b)(9)(iii) of the Tax Law and section 541.14 of the Sales and Use Tax Regulations. In the present case, Petitioner's installation of carpeting does not meet the criteria set forth in section 1101(b)(9)(iii) of the Tax Law and section 541.14 of the Sales and Use Tax Regulations to be considered a capital improvement to real property since such installation is not part of 1) the new construction of a building or structure; 2) the new construction of an addition to an existing building or structure; or 3) a total reconstruction of an existing building or structure. See sections 541.14(b)(2) and 541.14(b)(3), Examples 6 and 7 of the Sales and Use Tax Regulations. Therefore, charges by Petitioner to its customer for the sale and installation of glued-down wall-to-wall carpeting as described by Petitioner are subject to sales tax under sections 1105(a) and 1105(c)(3) of the Tax Law as charges for the sale and installation of floor covering that does not

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qualify as a capital improvement to real property. See *Maria T. Jones, Esq.*, Adv Op Comm T&F, December 30, 1998, TSB-A-98(91)S; *Hodgson, Russ, Andrews, Woods & Goodyear, LLP*, Adv Op Comm T&F, November 4, 1997, TSB-A-97(67)S.

DATED: June 26, 2006

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