

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-13(4)S
Sales Tax
January 8, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S111026A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether he must charge his customers New York State sales tax on the services he performs in updating kitchens for his customers.

We conclude that the services as described, when they are provided as a complete package, satisfy the statutory requirements for a capital improvement and as such, Petitioner's installation charges will not be subject to sales tax.

Facts

The Petitioner has a business updating kitchens in homes occupied by the owner(s). When he updates a kitchen, he performs the following services:

- Removing the old cabinet doors and hinges
- Painting the existing kitchen cabinet frames
- Installing new cabinet doors and new hidden hinges
- Painting the new cabinet doors and drawer fronts
- Installing new knobs or pulls on the cabinet doors (cabinet hardware)
- Replacing the old countertop with a new countertop
- Replacing the old faucet and sink with a new faucet and sink
- Replacing the old cabinet molding with new cabinet molding, which is painted to match the other improvements.

Petitioner advertises an installation package of a certain number of cabinet doors, drawer fronts along with new cabinet hardware, up to 14 feet of new countertops, a new faucet, and molding for a set price. If a particular project requires it, Petitioner will provide additional doors, fronts, and countertop at an additional rate. For owner-occupied properties, the installation is only provided as a complete package. Petitioner states that the renovation is designed to be done in its entirety in order to add substantial value to a house.

Petitioner also advertises a [REDACTED] for rental properties. The package offered at a set price includes new raised-panel doors, a new laminate countertop, new sink and faucet, and new hardware on the cabinets. This renovation is also intended to be done in its entirety in order to add substantial value to the property. For an additional cost, a customer may also add a backsplash, painting, or flooring to the contract. Petitioner represents that, regarding rental

property, he will contract with the owner of the property and not the tenant for purposes of the facelift.¹

Analysis

Whether or not Petitioner's receipts from the installation of a [REDACTED] are taxable depends on whether or not they are deemed capital improvements under the Tax Law. Tax Law §1105(a) imposes sales tax upon the receipts from every retail sale of tangible personal property except as otherwise provided under this article. Sales tax is also imposed on charges to install tangible personal property. *See* Tax Law §1105(c)(3). Tax Law §1105(c)(3)(iii) provides an exception for installing tangible personal property that will constitute a capital improvement to real property, property, or land as defined in §1101(b)(9). *See* 20 NYCRR §527.5(b)(4). Tax Law §1101(b)(9) defines capital improvement as an addition or alteration to real property which:

- (i) Substantially adds to the value of the real property or appreciably prolongs the useful life of the real property; and
- (ii) Becomes a 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
- (iii) Is intended to become a permanent installation.

Petitioner's package of services for homeowner kitchen remodeling includes installing new cabinet doors and drawer fronts, as well as a new countertop, new moldings, and a new sink and/or faucet. Petitioner also paints all the exposed wood surfaces (including the cabinet frames) to match the color scheme selected by the customer. Petitioner's kitchen and cabinet renovation package is substantially similar to that at issue in *Nu-Look Specialists, Inc.*, (Division of Tax Appeals, TAT (November 3, 1988)). Petitioner's renovation package therefore (1) substantially adds to the value of the real property; (2) the new products become part of the customer's real property or are permanently affixed to the customer's real property so that removal would potentially cause damage to the property or article itself; and (3) the installations are intended to become permanent additions to the real property. *See* Tax Law §1101(b)(9)(i). As such, the renovation project is a capital improvement and thus not subject to sales tax. *See Matter of Nu-look-Specialists, Supra.*

Petitioner's advertised [REDACTED] for rental dwellings includes new cabinet doors and hinges, new cabinet hardware, new countertops, and new sink and faucets. Like the improvements for the owner-occupied homes, the renovations are offered only as a package and as such will also qualify as a capital improvement and not be subject to sales tax. Additional

¹ Because the services Petitioner performs on rental properties will be done for the owner of the property, it is not necessary to discuss whether the existence of a leasehold affects the permanence requirement of the statute and regulations.

items may be added to the package at additional costs: a backsplash, flooring, and painting. The backsplash and painting offered at additional costs must be provided as constituent parts of the original package in order for them to be part of the overall capital improvement package. Flooring which is not part of new construction, new addition, or a total reconstruction is not a capital improvement, and Petitioner's installation charges are subject to sales tax. *See* Tax Law §1101(b)(9)(iii).

Accordingly, Petitioner will not be required to collect sales tax on the installation services in the packaged plans if he is presented with a properly completed *Certificate of Capital Improvement* (ST-124) within 90 days from the date of performing the capital improvements. *See* TSB-A-03(23)S. If Petitioner obtains a properly completed ST-124 in good faith, Petitioner cannot be held liable for sales tax he did not collect from his customer. *See* Tax Law §1132(c). Petitioner, in making a capital improvement, must pay tax on his cost of materials, as he is the ultimate consumer of the tangible personal property. *See* 20 NYCRR §527.7(b)(5). Generally, a contractor must pay sales tax on such materials at the time of purchase in accordance with §1101(b)(4) of the Tax Law.

DATED: January 8, 2013

/S/

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.