

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

TSB-A-15(18)S
Sales Tax
May 12, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S131009A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] “Petitioner”. Petitioner asks whether it must collect State and local sales tax on sales of certain built-in appliances on an installed basis, or whether such sales qualify as capital improvements.

Based on the facts submitted, we conclude that Petitioner is not required to collect sales tax on such appliances when sold on an installed basis. Instead, the sales tax on the appliance would be paid by Petitioner at the time of installation.

Facts

Petitioner has a retail store located in New York State, at which it sells appliances. Petitioner either makes retail sales of built-in appliances or sells these appliances on an installed basis to its retail customers. When the appliances are sold on an installed basis, Petitioner completes this installation. Petitioner does not know at the time of purchase from its supplier whether a built-in appliance will be sold alone or in conjunction with installation.

Analysis

Tax Law § 1105(a) imposes sales tax on the receipts from the sale of tangible personal property, except as otherwise provided in the Tax Law. Tax Law § 1105(c) imposes sales tax on services to real property, but excludes the installation of property that when installed would be a capital improvement to real property, as defined by Tax Law § 1101(b)(9). The term capital improvement is defined in Tax Law § 1101(b)(9)(i) as an addition or alteration to real property that (A) substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property, (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.

Publication 862, *Sales and Use Tax Classifications of Capital Improvement and Repairs to Real Property*, specifies that the installation of built-in dishwashers, freezers, ranges, refrigerators and ovens (“built-in appliances”) are capital improvements, while the installation of “free-standing appliances” are considered to be simply repairs, maintenance or installation of tangible personal property. The Publication also states that, “[i]n the case of a capital improvement, if you are the contractor who purchases materials and supplies, you pay tax to the supplier and you do not collect any sales tax from your customer.” If Petitioner sells any of

these listed built-in appliances in conjunction with the installation, Petitioner would be performing a capital improvement.

When Petitioner installs appliances that constitute a capital improvement, Petitioner would then be acting as a contractor, and would be required to pay sales tax on its purchase of the appliance. *See* 20 NYCRR § 541.13. Petitioner's receipt in good faith of a properly completed Form ST-124, *Certificate of Capital Improvement* from the customer within 90 days after the completion of the capital improvement releases it from the obligation to collect sales tax from its customer. *See* Tax Law § 1132(c). While Petitioner is not prohibited from passing on its cost of paying the sales tax as part of the sale price of the installed appliance, it cannot collect sales tax on the sale of the appliance as part of a capital improvement. Alternatively, if Petitioner is selling only the built-in appliance to a customer without installation, it must collect the sales tax from the customer on the sale price of the appliance.

If Petitioner operated solely as a contractor and did not operate a retail store, it would be required to pay sales tax on all its purchases of appliances or other materials at the time they were purchased from a supplier, but would be allowed a credit for sales taxes paid on property that did not become part of a capital improvement. *See* 20 NYCRR § 534.5. However, because Petitioner operates a retail store, it does not know at the time it purchases appliance from its supplier whether a particular appliance will be sold on an installed basis that will result in a capital improvement. Under these circumstances, Petitioner may purchase appliances exempt from sales tax as purchases for resale and may provide the supplier with Form ST-120, *Resale Certificate*. However, if the Petitioner later sells the built-in appliance on an installed basis as part of a capital improvement, Petitioner must accrue use tax on the appliance based on its purchase price for the appliance and the tax rate in effect in the jurisdiction where the appliance is installed. *See* 20 NYCRR § 541.13. The tax then must be remitted on the return for the period in which the installed appliance is sold to its customer.

DATED: May 12, 2015

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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.