

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

TSB-A-84(28)S
Sales Tax
October 15, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820426A

On April 26, 1982 a Petition for Advisory Opinion was received from Nu*Look Specialists, Inc., 2510 Burnet Avenue, Syracuse, New York 13206.

The issue raised is whether kitchen cabinet reconditioning work performed by Petitioner constitutes the rendering of capital improvements to real property for purposes of Article 28 of the Tax Law.

Petitioner is engaged in the business of reconditioning kitchen cabinets. The cabinets on which the services are performed are already installed. Petitioner installs new cabinet doors, with new hinges and pulls. New drawer fronts are also installed and oak veneers are bonded to the cabinet stiles, rails and sides.

Section 1105(c)(5) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the services of "Maintaining, servicing or repairing real property, property or land . . . as distinguished from adding to or improving such real property, property or land, by a capital improvement"

Section 527.7(a)(1) of the Sales and Use Tax Regulations states that "Maintaining, servicing and repairing are terms which are used to cover all activities that relate to keeping real property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition. Among the services included are services on a building itself such as painting; . . . lawn services"

Section 1101(b)(9) of the Tax Law defines the term "capital improvement" to mean an "addition or alteration to real property" which satisfies three specified criteria. Reading sections 1105(c)(5) and 1101(b)(9) of the Tax Law together leads to the conclusions that an operation performed with respect to real property could fall into, inter alia, one, but not both, of the categories of (1) maintenance, servicing or repair and (2) the creation of an addition or alteration (which may or may not satisfy the criteria for capital improvements). If an activity falls into the first category, thus, an investigation into its status as creating a capital improvement is concluded. Such category, as is indicated by the quoted provision of the Sales and Use Tax Regulations, encompasses not only the replacement of deteriorated or otherwise unsatisfactory parts or portions of unitary functional entities constituting real property, but cosmetic embellishments as well.

The reconditioning work described herein, accordingly, constitutes an activity relating to keeping the cabinets and drawers, which are presumably themselves real property, in a condition of fitness and/or restoring them to such condition. Accordingly, receipts from the service provided by Petitioner are subject to the sales tax imposed under section 1105(c)(5) of the Tax Law, as well as

TSB-A-84(28)S
Sales Tax
October 15, 1984

any similar local sales tax imposed pursuant to the authority of Article 29 of the Tax Law. See Old Craft Furniture Refinishing, State Tax Commission Advisory Opinion, TSB-H-81(28)S.

DATED: October 31, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau