

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

TSB-A-91 (78)S
Sales Tax
December 31, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911008A

On October 8, 1991 a Petition for Advisory Opinion was received from Triangle Pacific Corp., 16803 Dallas Parkway, Dallas, Texas 75248.

The issue raised by Petitioner, Triangle Pacific Corp., is whether cabinets used by the Petitioner in installed contracts are "items of the same kind" or are unique when determining their taxable basis for use tax liability.

Petitioner is a manufacturer/wholesaler of kitchen cabinets. Cabinet boxes are manufactured outside of New York State and sold from various distribution centers within the State. Sales are made to retail stores, contractors and construction companies. Petitioner also installs kitchen cabinets. In the case of installed jobs, the sale is actually that of a complete kitchen as opposed to boxes of cabinets. The salesman must layout each kitchen to fit the unique characteristics of the home. No two kitchens are ever exactly alike. Often the layout is aided by a kitchen design computer program created by the Petitioner. Individual cabinet boxes are treated as inventoriable parts used to construct each unique kitchen.

Petitioner's salesman meets with the contractor to determine the actual needs for each kitchen. Decisions are made regarding desired layouts and sizings. The order is then placed for the various cabinets and/or cabinet parts that are required for each kitchen designed. Once the cabinets, cabinet parts/components, and countertops are received, Petitioner's installer begins work. The installer makes required modifications to the materials in order to complete the kitchen as designed by the contractor and salesman. There are no two kitchens just alike, and the retail stores do not sell the cabinets and countertops in such a manner.

Section 1110 of the Tax Law provides in part that:

Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one except as otherwise exempted under this article, . . . (B) of any tangible personal property manufactured, processed or assembled by the user, (i) if items of the same kind of tangible personal property are offered for sale by him in the regular course of business. . .

Section 531.3(b)(1)(i)(a) of the Sales and Use Tax Regulations provides that:

(i) If the user offers items of the same kind for sale in the regular course of business, the basis on which use tax is computed is the price at which items of the same kind of tangible personal property are offered for sale by the user. The price at

which items are offered for sale is evidenced by a price list, catalog price or record of sales. In the absence of a catalog price or price list, the average of the prices charged various customers will be deemed to be the price at which the user would sell such item during the regular course of business.

(a) Items of the same kind mean that items belong to an identifiable class, but need not be identical.

Example 2: Windows are items of the same kind when they are a standard size and materials whether or not they are sold from inventory or produced to order from a catalog description. A manufacturer of windows produces from a catalog description square, round and hexagon shaped windows from various materials. The windows regardless of shape, size or materials are considered to be items of the same kind.

When items which are not standard or cataloged are made to the specifications of a particular job, these will not be considered items of the same kind with catalog or inventory sales.

Items made to the specifications of a particular job will not be considered items of the same kind as items made to the specifications of another particular job.

In the instant case the cabinet boxes manufactured and sold by Petitioner to retail stores, contractors and construction companies are the same kind of cabinet boxes used by the Petitioner when it installs a custom kitchen for a contractor. Therefore such cabinet boxes fall within the definition of "items of the same kind" as set forth in Section 1110 of the Tax Law and Section 531.3(b)(1)(i)(a) of the Sales and Use Tax Regulations. The fact that Petitioner's installer may modify the cabinet boxes or that no two custom kitchens when completed are alike or that the retail stores do not sell the cabinet boxes as part of a custom kitchen installation does not change the identity of the cabinet boxes from being "items of the same kind".

DATED: December 31, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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