

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

TSB-A-93 (9) S
Sales Tax
January 25, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S921103B

On November 3, 1992 a Petition For Advisory Opinion was received from The Shutter Shop, 116 Killewald Avenue, Tonawanda, New York 14150.

The issue raised by Petitioner, The Shutter Shop, is whether the sale and installation of custom interior window shutters qualifies as a capital improvement to real property under Section 1101(b)(9) of the Tax Law.

Petitioner sells and installs custom shutters that are measured specifically for a given window. More often than not they are installed as an inside mount directly to woodwork. The materials cannot be successfully re-cut to fit other windows. The shutters are always sold with the house.

The materials used in the shutters do not deteriorate due to exposure as compared to other window treatments which are subject to rot or track wear.

Section 1105(a) of the Tax Law imposes a tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1105(c)(3) of the Tax Law imposes a tax on receipts from the service of "Installing tangible personal property ... except for installing property which, when installed, will constitute (a) ... capital improvement to real property "

Section 1101(b)(9) of the Tax Law defines the term capital improvement 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."

In David W. Sprague Adv Op, St Tx Comm, TSB-A-81(23)S, August 25, 1981 it was held that window quilts which are custom cut for each window, are installed using nails, screws or glue, have a life expectancy of fifteen years, cost \$6.00 per square foot, and are eligible for the federal energy credit are not similar in use and design to storm windows and therefore did not constitute capital improvements. Thus their sale and installation was subject to sales tax.

In Verticals Inc., Adv Op, St Tx Comm, September 3, 1986, TSB-A-86(34)S it was similarly held that the sale and installation of energy efficient vertical blinds did not constitute a capital improvement and thus their sale and installation was subject to sales tax.

TSB-A-93 (9) S
Sales Tax
January 25, 1993

Custom interior window shutters are not similar in design to a storm window, but rather are similar to window quilts, insulated draperies and vertical blinds. They do not meet the definition of a capital improvement as set forth in Section 1101(b)(9) of the Tax Law.

Accordingly Petitioner's sale and installation of custom interior shutters does not qualify as a capital improvement. It constitutes the sale of tangible personal property that remains so after its installation. Thus, the sale and installation of custom window shutters by Petitioner is subject to the sales tax imposed under Sections 1105(a) and (c) of the Tax Law.

DATED: January 25, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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