

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

TSB-A-96 (30)S
Sales Tax
May 10, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S951219C

On December 19, 1995 the Department of Taxation and Finance received a Petition for Advisory Opinion from FST Services, 24 Dorsetwood Drive, Rochester, NY 14612.

The issue raised by Petitioner, FST Services, is whether the service of applying a chemical treatment to new and existing tile floors which makes the tile slip resistant is subject to State and local sales and use taxes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner provides a treatment to new and existing tile floors which, when applied, increases the static coefficient of friction of the floor and ground surfaces up to 60%. This treatment is only applied to hard mineral surfaces (ceramic, quarry tile, concrete, terrazzo, etc.). This treatment represents a substantial savings for businesses and municipalities in their efforts to comply with the Americans With Disabilities Act. The Americans With Disabilities Act of 1990 mandates that all companies and organizations take action to provide "slip and fall" protection on hard surfaces.

The process begins by thoroughly cleaning and degreasing the floor to be treated with the chemical. Next, depending on the area to treated, the chemical treatment is either sprayed on or applied by mop. Then a neutralizer is applied over the treated floor.

Except when wet, the floor shows no visible sign of being treated. When wet the floor seems to be etched with a tread-like pattern. The chemical treatment makes the tile slip resistant for up to five years and cannot be removed.

Section 1101(b)(9) of the Tax Law provides in part:

(9) Capital improvement. (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.

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(iii) Notwithstanding the provisions of subparagraph (i) of this paragraph: (A) Floor covering, such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile and vinyl tile, installed as the initial finished floor covering in new construction or a new addition to or total reconstruction of existing construction shall constitute an addition or capital improvement to real property, property or land; and

(B) Floor covering, such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile and vinyl tile, installed other than as described in clause (A) of this subparagraph shall not constitute an addition or capital improvement to real property, property or land.

Section 1105 of the Tax Law imposes sales tax upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

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(c) The receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

* * *

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter.

* * *

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital

improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter, but excluding services rendered by an individual who is not in a regular trade or business offering his services to the public.

Section 541.1(c) of the Sales and Use Tax Regulations provides that "[r]eceipts from the performance of a capital improvement to real property by a contractor are not subject to the sales tax."

Section 541.1(d) of the Sales and Use Tax Regulations provides that "[r]eceipts from the services of repairing, maintaining or servicing of real property . . . and tangible personal property, and the receipts from the installation of tangible personal property that remains tangible personal property are subject to the New York State and local sales tax unless otherwise exempt."

Section 541.2(1) of the Sales and Use Tax Regulations provides as follows:

(1) Maintaining, servicing, or repairing are terms which are used to cover all activities that relate to keeping real or personal 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; services to the grounds, such as lawn services, tree removal and trimming; trash and garbage removal; sewage service and snow removal. (emphasis added)

Pursuant to Section 1105(c)(5) of the Tax Law and Section 541.1(c) of the Sales and Use Tax Regulations, a sales tax is not imposed on the charge for adding to or improving real property, property or land by a capital improvement. Section 1105(c)(5) of the Tax Law imposes sales tax, however, on the charge for maintaining, servicing or repairing real property to keep it in a condition of fitness, efficiency, readiness or safety, or restoring it to such condition. In this case, Petitioner provides a treatment to new and existing tile floors (ceramic, quarry tile, concrete, terrazzo, etc.) which, when applied, makes the tile slip resistant for up to five years. It appears that Petitioner's service is performed on floors, not on floor coverings within the meaning of Section 1101(b)(9)(iii) of the Tax Law. See TSB-M-89(12)S.

The initial application of the chemical treatment to a new floor in conjunction with the installation of the new floor is considered part of the installation of the new floor. Since the installation of the floor results in a capital improvement and is not taxable, the receipts from application of the chemical treatment to the new floor will also not be subject to sales and use taxes. It is also noted that if the chemical treatment were applied to a floor covering, the receipts would be exempt if in connection with the initial installation of the floor covering as described in Section 1101(b)(9)(iii)(A) of the Tax Law. However, application of the chemical treatment to an existing

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floor or floor covering constitutes the maintaining, servicing and repairing of real property and is not a capital improvement as defined in Section 1101 (b)(9) of the Tax Law. Therefore, the charge for this service is subject to sales and use taxes.

DATED: May 10, 1996

/s/
Doris S. Bauman
Director
Technical Services Bureau

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