

INSTALLATION OF FLOOR COVERINGS  
SUBJECT TO SALES AND USE TAXES

Effective June 1, 1989, the definition of capital improvement with respect to floor coverings in Section 1101(b)(9) of the New York State Sales and Use Tax Law has been changed with the effect that most installations of floor covering will not constitute a capital improvement or addition to real property. Rather, most such installations will be taxable installations of tangible personal property.

This amendment adds a new paragraph (iii) to section 1101(b)(9) which provides that charges for the installation of floor covering will be exempt from sales tax as a capital improvement on and after June 1, 1989 only if installed as the initial finished floor covering:

- 1) in the new construction of a building or structure; or
- 2) in a new addition to an existing building or structure; or
- 3) in the total reconstruction of an existing building or structure.

The installation of floor covering under any other circumstance is not a capital improvement. Rather it is the installation of tangible personal property, the charge for which is subject to tax under Section 1105(c)(3) of the Tax Law, regardless of the manner in which the floor covering is installed. However, where floor covering is installed under the qualifying circumstances described above within a short period of time after the building or structure has otherwise been completed, such installation will qualify as a capital improvement and the charges for the installation will be exempt.

For purposes of this amendment to the Tax Law, the term floor covering includes carpet, carpet tile, carpet padding, linoleum and vinyl roll floor covering, linoleum tile, vinyl tile and other similar floor coverings.

To determine whether a charge for the installation of floor covering is not subject to tax under the new criteria for capital improvement, the following definitions will apply:

New Construction means original construction of a building or structure which did not exist before such construction.

New Addition means original construction of a new room, wing or unit of a building which enlarges the exterior of the existing building or structure.

Total Reconstruction means complete rehabilitation or replacement of major structural elements of an existing building or structure. Mere remodeling or redecorating does not constitute total reconstruction.

The "Certificate of Capital Improvement", Form ST-124, has been revised to reflect the changes described in this Memorandum. Taxpayers and vendors must use only the revised Certificate of Capital Improvement for installations of floor coverings occurring on or after June 1, 1989. Manufacturers, wholesalers, retail vendors, contractors, and retailers engaged in contracting may not accept a Certificate of Capital Improvement for floor covering sold on an uninstalled basis, since the retail sale of floor coverings without installation is subject to tax. Thus, sales tax must be collected on sales of floor coverings to persons who will perform the installation themselves.

Floor coverings do not include floorings such as wood floor, ceramic tile floor, terrazzo, marble, concrete or other similar floor. The tax treatment for installation of such floorings is still governed by the conditions set forth in paragraph (i) of Section 1101(b)(9) of the Tax Law, which defines a capital improvement to be an addition or alteration to real property which:

- o substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and
- o 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
- o is intended to become a permanent installation.

#### Transition Rule

The new rules apply to all charges made for the installation of floor coverings billed on or after June 1, 1989, unless:

- o the installation was completed before June 1, 1989; or
- o the installation was begun prior to June 1, 1989, but not completed until after June 1, 1989.

If either of the above conditions are met, then the taxability of the installation will be determined under the rules in existence prior to June 1, 1989.