

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

TSB-A-90 (22)S
Sales Tax
April 16, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891106B

On November 6, 1989, a Petition for Advisory Opinion was received from Raised Computer Floors, Inc., 1 Charles Street, Westwood, New Jersey 07675.

The issue raised by Petitioner, Raised Computer Floors, Inc., is whether the installation of access flooring constitutes the installation of floor covering as defined in Section 1101(b)(9)(iii) of the Tax Law.

Petitioner is engaged in the business of furnishing the materials and labor for the construction of access floors in business buildings.

Access flooring is constructed above the building base floor (slab) in such a way that electrical lines, plumbing, telephone systems and air-conditioning systems are installed in the cavity between the slab and the floor.

The flooring is installed on pedestals which are bolted or epoxied to the base floor or slab of the structure. After the plumbing, electrical, telephone, security and heating, ventilation and air conditioning systems are in place on the slab, the connecting struts are affixed to the pedestals and the flooring panels are placed on the struts. This installed surface is actually the "floor" of the building, several inches above the slab.

The entire design of the space is keyed to the floor level so that doors, corridors, elevators, etc. are the same level as the flooring. If the flooring was not installed, occupants would walk off the elevator area into a cavity in the structure.

The State Tax Commission held in Matter of Raised Computer Floors, Inc., Dec St Tax Comm, January 6, 1984, TSB-H-84(12)S that raised flooring is not a capital improvement. This decision was affirmed by the Appellate Division, Third Department, in Raised Computer Floors, Inc. v Chu, 116 AD2d 958, TSB-H-84(12.1)S. Raised flooring constitutes a type of tangible personal property and is not considered to be real property. Further, even though it may be annexed to real property, it is nevertheless considered tangible personal property at the time of sale in accordance with Section 526.8(d) of the Sales and Use Tax Regulations. Because raised flooring neither becomes a part of, nor is permanently affixed to real property, the exemption from sales tax which applies to items constituting capital improvements to real property is not available with respect to raised flooring in accordance with Sections 1105(c)(3) and (c)(3)(iii) of the Tax Law. The sale and installation of raised flooring constitutes a sale and installation of tangible personal property in accordance with Sections 1105(a) and (c) of the Tax Law and is therefore subject to the New York State and local sales and use tax. (Technical Services Bureau Memorandum, Taxable Status of Raised Flooring, December 10, 1982, TSB-M-82(30)S).

Furthermore, the installation of the raised flooring does not fall within the definition of floor covering as defined in Section 1101(b)(9)(iii) of the Tax Law.

Effective June 1, 1989 Section 1101(b)(9) of the Tax Law was amended by adding the following clause:

- (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. (Ch 61 L. 1989)

The language contained in the amendment describing the types of materials that constitute capital improvements in new construction or additions or total reconstruction of existing construction is very specific and does not include in the definition the type of access flooring that is being installed by the Petitioner.

Accordingly, Petitioner's sales and installation of raised flooring does not come within the meaning of "floor covering" as defined in Section 1101 (b)(9)(iii). Petitioner's sale of access flooring is the sale and installation of tangible personal property. Therefore, petitioner's sales and installation of access flooring are subject to the tax imposed under Sections 1105(a) and 1105(c)(3) of the Tax Law.

DATED: April 16, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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