

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

TSB-A-92 (11)S
Sales Tax
February 19, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911028B

On October 28, 1991 a Petition for Advisory Opinion was received from Kohler Awning, Inc., 365 Nagel Drive, Buffalo, New York 14225.

The issue raised by Petitioner, Kohler Awning, Inc., is whether its sales of installed canopies, illuminated awning signs or awnings fabricated with vinyl, polyester, acrylic, or modacrylic fabrics are subject to the imposition of sales tax.

Petitioner fabricates and installs canopies, illuminated awning signs and awnings that are fabricated with vinyl, polyester, acrylic or modacrylic fabrics.

These units are custom fabricated for each customer to fit to their building. They are permanently attached to the building, rigid, and designed for year round use.

Installation may include lighting to illuminate the graphics (signage). Fabrics used in the units meet and/or exceed New York State Fire Resistant requirements.

The framework is zinc dipped steel welded to conform to the building it is being attached to. The fabrics are permanently attached to the frames with screws and extruded moldings. The units cannot be relocated to another location without modifications and alterations.

Section 1101(b)(9) of the Tax Law and Section 527.7 of the Sales and Use Tax Regulations define the term capital improvement as an addition or alteration to real property (i) which substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property, and (ii) which 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 (iii) is intended to become a permanent installation.

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 an addition or capital improvement to real property. . ."

The Department has previously determined that the installation or replacement of existing awnings (other than canvas) constitutes capital improvements within the meaning and intent of Section 1101(b)(9) of the Tax Law.

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See New York State Department of Taxation and Finance, New York State and Local Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property, Publication 862 (1/90), at 6.

Since the canopies and awnings fabricated by the Petitioner meet the conditions for being a capital improvement as set forth in Section 1101(b)(9) of the Tax Law and Section 527.7 of the Sales and Use Tax Regulations and since the fabrics used in their fabrication are durable plastic coverings as opposed to being a non-durable canvas fabric, therefore the sale of such installed canopies, and awnings would not be subject to the imposition of sales tax in accordance with the meaning and intent of Section 1105(c)(3) of the Tax Law.

However, illuminated awning signs do not constitute capital improvements and their sale would be subject to the imposition of sales tax. Thus, if Petitioner does not separately state the charge for the awning and the charge for the illuminated awning sign, the entire charge received from the sale will be subject to sales tax.

DATED: February 19, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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