

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

TSB-A-93 (46)S  
Sales Tax  
September 1, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930430B

On April 30, 1993 a Petition for Advisory Opinion was received from Maggio & Maggio CPA's, 285 Middle Country Rd., Smithtown, New York 11787.

The issue raised by Petitioner, Maggio & Maggio CPA's, is whether its client, a contractor, is required to collect sales tax on the sales of kitchen cabinets.

Petitioner's client is engaged in the business of installing and renovating kitchens and bathrooms. The client purchases kitchen cabinets from a manufacturer who drop ships them to the client's customer. The customer then hires a subcontractor to install the cabinets. In addition, in some cases the client will install the cabinets.

Section 527.7(b)(5) of the Sales and Use Tax Regulations provides that:

Any contractor who is making a capital improvement must pay a tax on the cost of materials to him, as he is the ultimate consumer of the tangible personal property.

Section 541.1(b) of the Sales and Use Tax Regulations provides that:

The principle distinguishing feature of a sale to a contractor, as compared to a sale to other vendors who purchase tangible personal property for resale, is that the sale of tangible personal property to a contractor for use or consumption in construction is a retail sale and subject to sales and use tax, regardless of whether tangible personal property is to be resold as such or incorporated into real property as a capital improvement or repair. Whenever a contractor uses materials, on which the contractor has paid sales tax, in a repair or maintenance contract (except interior cleaning and maintenance contracts of 30 days or more) subject to the sales tax on services under section 1105(c) of the Tax Law, the contractor may be entitled to a refund or credit of the portion of the tax he paid attributable to the materials transferred to the customer.

Section 534.5(b) of the Sales and Use Tax Regulations provides that:

A contractor, subcontractor or repairman who makes a retail sale of tangible personal property upon which tax was required to be paid when purchased by the contractor, subcontractor or repairman pursuant to the provisions of section 1101(b)(4) of the Tax Law may apply for a credit or refund of such tax.

TSB-A-93 (46)S  
Sales Tax  
September 1, 1993

Accordingly, in a transaction where Petitioner's client sells tangible personal property consisting of kitchen cabinets without installation, the client is required to collect the sales tax imposed under Section 1105(a) of the Tax Law. He is then entitled to a refund or credit of any sales tax which he was required to pay in accordance with the provisions of Sections 534.5(b) and 541.1(b) of the Sales and Use Tax Regulations since as a contractor he was not entitled to purchase the kitchen cabinets for resale.

However, in those cases where Petitioner's client installs the kitchen cabinets, he is providing a capital improvement and therefore is not required to collect sales tax from his customers. He is however required to pay sales tax on his purchases of the kitchen cabinets in accordance with the provisions of Sections 527.7(b)(5) and 541.1(b) of the Sales and Use Tax Regulations.

DATED: September 1, 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.