

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

TSB-A-98(9)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970623A

On June 23, 1997, a Petition for Advisory Opinion was received from Douglas A. Skolnick, 828 Stonewall Court, Franklin Lakes, New Jersey 07417. Petitioner, Douglas A. Skolnick, submitted additional information pertaining to this petition on August 15, 1997.

The issue raised by Petitioner is whether the installation of custom shutters and blinds on all doors and windows as original equipment in a new home is a capital improvement to real property pursuant to Section 1101(b)(9) of the Tax Law and is exempt from sales tax.

Petitioner submits the following facts.

Petitioner is a New York homeowner. Prior to the completion of the original construction of Petitioner's home, Petitioner hired a contractor to provide and install original equipment in the new home, consisting primarily of custom-made shutters and blinds. The shutters may be floor-to-ceiling units resembling louvered doors. The blinds resemble venetian blinds though custom fitted and made of wood. The contractor also provided and installed window casings, frames, sills and aprons in connection with the shutters and blinds. The amount charged by the contractor for materials and labor was in excess of \$70,000, and Petitioner paid sales tax on this amount. Given their prevalence throughout the premises, the shutters, blinds and related woodwork add materially to its ambiance and would be a significant consideration to any prospective buyer. The shutters, blinds and related woodwork were installed over a period of weeks and permanently drilled into place. Glue was also used to affix the woodwork to the walls. Removal of the contractor's work would cost thousands of dollars in labor, would significantly damage the surrounding woodwork, resulting in costly repairs, and in many cases, could not be done without damaging the articles themselves. The articles have been custom fitted to the spaces they occupy. There is no intention to remove them.

Applicable Law and Regulations

Section 1101(b)(9) of the Tax Law defines a capital improvement as follows:

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.

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 (a) ... capital improvement to real property...."

Section 1115(a)(17) of the Tax Law provides an exemption from sales tax for:

Tangible personal property sold by a contractor, subcontractor or repairman to a person other than an organization described in subdivision (a) of section eleven hundred sixteen, for whom he is adding to, or improving real property, property or land by a capital improvement, or for whom he is about to do any of the foregoing, if such tangible personal property is to become an integral component part of such structure, building or real property

Opinion

The installation of tangible personal property so that it retains its identity as tangible personal property when installed is subject to sales tax under Section 1105(c)(3) of the Tax Law. Generally, the installation of shutters and blinds is subject to sales tax as the installation of tangible personal property and does not result in a capital improvement. See The Shutter Shop, Adv Op Comm T&F, January 25, 1993, TSB-A-93(9)S.

However, in this case, Petitioner had custom-made shutters installed as the original installation in a new home before construction work on the home was completed. The installation of the custom-made shutters was performed as part of the finishing carpentry. The installation involved the enclosing of the window casing, adding the sill, apron, remaining portions of the enclosure and the door frame with molding. The original installation of the above items was necessary to complete the capital improvement project; otherwise, the windows and door frames would be exposed showing the sheetrock nailed to the stud framing.

In Home Insulation & Supply Inc., Adv Op Comm of T&F, May 23, 1996, TSB-A-96(32)S, it was determined that permanent, built-in shelving installed in a new home or commercial building in conjunction with the construction of the home or commercial building is deemed to be part of the capital improvement project. Therefore, the installation of such shelving in a new home or commercial building is not subject to sales tax, pursuant to Section 1105(c)(3)(iii) of the Tax Law.

Accordingly, the installation of the custom-made shutters and woodwork as part of the original construction of the new home in the manner described by Petitioner is excluded from the sales tax under Section 1105(c)(3) of the Tax

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Law. Charges by the contractor to Petitioner for materials which become part of the capital improvement are exempt from tax under Section 1115(a)(17) of the Tax Law. However, the contractor is required to pay tax on its purchase of such materials.

Installation of the blinds, however, in Petitioner's home does not constitute a capital improvement. Blinds do not become part of the real property. See Publication 862, Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property, (4/96), Verticals, Inc., OAdv Op Comm T&F, September 3, 1986, TSB-A-86(34)S. Accordingly, any amounts paid by Petitioner for the blinds and their installation are subject to sales tax.

DATED: February 26, 1998

/s/
JOHN W. BARTLETT
Deputy Director
Technical Services Bureau

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