

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

TSB-A-90 (29)S
Sales Tax
May 29, 1990

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900425B

On April 25, 1990 a Petition for Advisory Opinion was received from Robert Otto Inc., Box 500, Wainscott, New York 11875.

The issue raised by Petitioner, Robert Otto Inc., is whether the installation of mirrors in newly constructed and renovated homes are considered to be capital improvements exempt from the imposition of sales tax.

Petitioner permanently installs mirrors in new and renovated homes. The mirrors are installed in bathrooms, dining rooms, living rooms, bedrooms, halls, etc. The mirrors are permanently affixed to the walls with a mastic glue made especially for the purpose of affixing them permanently so they will not fall or come off. In addition, metal fasteners are used when the mirrors are of a large dimension. When the mirrors are removed, they must be broken as they cannot be removed in one piece because of the glue. The surface from which they are removed must be replaced with new sheet rock, replastered, sanded and a finish applied in the case of a plaster wall. If the mirrors were applied to a wooden panel, the panel must be completely removed and replaced. The removal of the mirrors causes extensive damage to the surface to which they had been attached.

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 tile walls constitutes capital improvements within the meaning and intent of Section 1101(b)(9) of the Tax Law. 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 13.

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The permanent installation of mirrors in new and renovated homes is similar to the installation of tile walls in such homes and thus such installation constitutes a capital improvement in accordance with Section 1101(b)(9). Therefore charges to the Petitioner's customers for such installation 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.

DATED: May 29, 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.