

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

TSB-A-92 (48) S
Sales Tax
June 19, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920206B

On February 6, 1992 a Petition for Advisory Opinion was received from Bloch Industries, Inc., 140 Commerce Drive, Rochester, N.Y. 14623.

The issue raised by Petitioner, Bloch Industries, Inc., is whether kitchen cabinets produced by Petitioner are considered to be "items of the same kind" or are considered to be unique when determining Petitioner's use tax liability.

Petitioner custom manufactures and installs kitchens. Petitioner maintains no inventory, nor does it have a catalog or price list. All orders are made to the specifications of the customer. Because of the variations in kitchen design and layout, every kitchen is manufactured for the job with tolerances down to 1/8 of an inch. After the cabinets have been manufactured, adjustments may be made at the site of installation. Approximately 30% of Petitioner's cabinets are sold uninstalled.

In instances where Petitioner does not install the kitchens, Petitioner's customer, usually a remodeling contractor and his customer, contacts Petitioner for design assistance due to the restructuring aspects of the project. The remodeler and Petitioner then meet to solidify the initial decision including decisions as to dimensions, plumbing and electrical considerations that will impact cabinet design and construction. Once Petitioner, the remodeler and his customer agree on design, materials and specifications, Petitioner produces the cabinets.

Section 1110 of the Tax Law provides in part that:

Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one except as otherwise exempted under this article, . . . (B) of any tangible personal property manufactured, processed or assembled by the user, (i) if items of the same kind of tangible personal property are offered for sale by him in the regular course of business.

Section 531.3(b)(1)(i)(a) of the Sales and Use Tax Regulations provides that:

(i) If the user offers items of the same kind for sale in the regular course of business, the basis on which use tax is computed is the price at which items of the same kind of tangible personal property are offered for sale by the user. The price at which items are offered for sale is evidenced by a price list, catalog price or record of sales. In the absence of a catalog price list, the average of the prices charged various customers will be deemed to be the price at which the user would sell such item during the regular course of business.

(a) Items of the same kind mean that items belong to an identifiable class, but need not be identical.

Example 2: Windows are items of the same kind when they are a standard size and materials whether or not they are sold from inventory or produced to order from a catalog description. A manufacturer of windows produces from a catalog description square, round and hexagon shape windows from various materials. The windows regardless of shape, size or material are considered to be items of the same kind.

When items which are not standard or cataloged are made to the specifications of a particular job, these will not be considered items of the same kind with catalog or inventory sales.

Items made to the specifications of a particular job will not be considered items of the same kind as items made to the specifications of another particular job.

Petitioner does not offer". . . items of the same kind for sale in the regular course of business . . ."Rather, Petitioner's business activities come within the purview of the third paragraph of example 2 above and thus are not subject to the use tax imposed by Section 1110(B)(i) of the Tax Law. (see: Cardinal Kitchens, Inc. Dec St Tx Comm, September 28, 1976 STH-77-7). The basis upon which Petitioner therefore owes use tax on its installed cabinets, is the cost of the raw materials contained in the cabinets.

TSB-A-92 (48) S
Sales Tax
June 19, 1992

It should be noted that Petitioner's production machinery and equipment does not qualify for the manufacturer's exemption provided by Section 1115(a)(12) of the Tax Law since less than 50% of its cabinets are sold uninstalled.

DATED: June 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.