

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

TSB-A-96 (80) S
Sales Tax
December 17, 1996

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941125E

On November 25, 1994, the Department of Taxation and Finance received a Petition for Advisory Opinion from T.G. Elliott Associates, Inc., P.O. Box 733, 84 Old Pascack Road, Pearl River, New York 10965. Petitioner, T.G. Elliott Associates, Inc., submitted additional information on June 12, 1995.

The issue raised by Petitioner is whether the sale and installation of certain types of moveable partitions are considered a capital improvement for sales tax purposes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner manufactures three different types of moveable partitions which it describes as operable, accordion, and portable.

Operable

Operable partitions consist of large panels that may be individual, paired or continuously hinged. The panels may contain windows, doors, and sound absorbing material. The panels are mounted on a track installed in the ceiling using a roller or trolley system attached to each section of paneling. The partition track is installed by bolting it to threaded rods which are inserted in the structural supports in the ceiling. After installation, the panels may be used to make any number of rooms and may be moved to any location serviced by the track.

Accordion

Accordion partitions are also track mounted using a roller or trolley system, and contain sound insulating material. These partitions do not consist of panels, but rather are one-piece units consisting of corrugated laminated material covering a collapsible steel frame. These partitions are lighter in weight than the operable partitions.

Portable

Portable panels are similar to the operable panels except that they are not mounted on any tracks or other devices. The portable panels are lightweight and can be easily moved from location to location using a cart, without the need for special tools or skilled labor.

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

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 the article itself; and
- (C) Is intended to become a permanent installation.

All three conditions must be met in order for the installation to qualify as a capital improvement. Moveable partitions, machinery and equipment, and most other forms of trade fixtures normally require some form of affixation to real property. However, the test is not merely whether the tangible personal property is affixed to real property. Rather, the test is whether the tangible personal property is affixed to such a degree that it loses its separate identity and becomes part of the real property or is attached to such a degree that removal would cause material damage to the property or the article. Material damage is not considered to exist merely because the property in question is worth less when it is removed than it was worth when it was installed and in operating condition. See McKesson Drug Company, Adv Op Comm T&F, March 5, 1987, TSB-A-87(13)S; Peek 'n Peak Recreation. Inc., Adv Op Comm T&F, July 9, 1987, TSB-A-87(24)S.

Based on the above, merely mounting partitions on rollers and tracks that are attached to real property does not, in and of itself, create the degree of permanence necessary to establish that a particular installation is a capital improvement. Consequently, the sale and installation of Petitioner's moveable partitions do not qualify as a capital improvement and are subject to sales and compensating use tax.

DATED: December 17, 1996

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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