

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

TSB-A-98(76)S
Sales Tax
November 6, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S980831A

On August 31, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Francis X. Gassert, 9 Lorraine Ct., Jamesport, New York, 11947.

The issue raised by Petitioner, Francis X. Gassert, is whether the installation of a retractable, synthetic awning constitutes the installation of a capital improvement.

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

Petitioner installed a retractable awning on the roof of his house. The awning is made of a synthetic plastic fabric similar to polyester. The pictures submitted by Petitioner show that the awning is attached to brackets which are bolted to the roof of the house immediately above the gutter. If the awning were to be removed, substantial costs would be incurred to repair roof sheathing and replace shingles. The awning is left on Petitioner's house throughout the year.

Applicable Law

Section 1101(b)(9)(i) of the Tax Law defines the term 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 article itself; and

(C) Is intended to become a permanent installation.

Section 1105 of the Tax Law provides in part, as follows:

Imposition of sales tax.-On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property...except for...installing property which, when installed, will constitute an addition or capital improvement to real property...

Opinion

Kohler Awning, Inc., Adv Op Comm T&F, February 19, 1992, TSB-A-92(11)S addressed whether the installation of awnings that are fabricated with vinyl, polyester, acrylic or modacrylic fabrics constitute the installation of a capital improvement. Kohler Awning, Inc. stated:

The Department has previously determined that the installation or replacement of existing awnings (other than canvas) 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 Classification of Capital Improvements and Repairs to Real Property, Publication 862 (1/90), at 6.

Since the canopies and awnings fabricated by Petitioner meet the conditions for being a capital improvement as set forth in Section 1101(b)(9) of the Tax Law and Section 527.7 of the Sales and Use Tax Regulations and since the fabrics used in their fabrication are durable plastic coverings as opposed to being a non-durable canvas fabric, therefore [sic] the sale of such installed canopies, and awnings 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.

Therefore, assuming the covering portion of Petitioner's awning is made of a durable synthetic material, in accordance with Kohler Awning, Inc., supra, and the information contained in Publication 862, the installation of the awning as described by Petitioner constitutes the installation of a capital improvement, which is not subject to sales tax.

DATED: November 6, 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.