

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

TSB-H-81(28)S
Sales Tax
March 2, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800829A

On August 29, 1980, a Petition for Advisory Opinion was received from Old Craft Furniture Refinishing, 88B Brook Avenue, Deer Park, N.Y. 11729.

The issue raised is whether charges for refinishing cabinets are subject to the sales tax imposed under Article 28 of the Tax Law.

Petitioner's services basically consist of the removal of the existing finish from cabinets and the application of a new finish to such cabinets. The cabinets in question are already installed at the time of refinishing. In some cases Petitioner may sell and install new cabinet doors and finish them to match the rest of the cabinet.

Section 1105(c) (3) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the services of "installing tangible personal property, or maintaining, servicing or repairing tangible personal property not held for sale in the regular course of business... except for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law...."

Section 1105(c) (5) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the services of "maintaining, servicing or repairing real property, property or land...whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement...."

The Sales and Use Tax Regulations define the term capital improvement to mean ". . .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...." 20 NYCRR 527.7(a) (3)

Section 527.5(a) (3) of the Regulations states that "Maintaining, servicing and repairing are terms used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition...." Section 527.7(a)(1) states that "Maintaining, servicing and repairing are terms which are used to cover all activities that relate to keeping real property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition. Among the services included are services on a building itself such as painting...."

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The refinishing of cabinets, including the replacement of cabinet doors, does not result in a capital improvement to real property in that (1) such activity does not substantially add to the value of the real property or appreciably prolong its useful life and (2) such activity does not involve the installation of tangible personal property which is permanently affixed to real property such that removal would cause material damage to the property.

The refinishing of cabinets, including the replacement of doors, constitutes an activity relating to keeping such property, whether it constitutes real or personal property, in a condition of fitness and/or restoring it to such condition.

Accordingly, receipts from the service of refinishing cabinets as provided by Petitioner, including the replacement of cabinet doors, are subject to the sales tax imposed under section 1105(c)(3) or (5) of the Tax Law, as well as any similar local sales tax imposed pursuant to the authority of Article 29 of the Tax Law.

DATED: November 25, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau