

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

TSB-A-84(21)S  
Sales Tax  
August 20, 1984

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S831206A

On December 6, 1983 a Petition for Advisory Opinion was received from Jason G. Robinson, 589 Thompson Street, Elmira, New York 14904.

The issue raised is whether the complete installation of a new linoleum floor constitutes a capital improvement to real property.

Petitioner contracted for new linoleum to be installed in the kitchen and bathroom of his home. The linoleum floor covering was installed in the same manner in each room, being glued over a base. The bathroom base consisted of particle board sub-flooring, while the kitchen base consisted of an existing tile floor. Sales tax was collected on the portion of the charge attributable to the work done in the kitchen, while no tax was charged with respect to the work performed in the bathroom. Petitioner has filed an application for refund of the tax paid.

Section 1105(c)(3) of the Tax Law imposes a tax on the receipts from the sale of the service of installing, maintaining, servicing or repairing tangible personal property, except when such installation will constitute an addition or capital improvement to real property. Section 1101(b)(9) of the Tax Law defines the term "capital improvement" as any addition or alteration to real property which "(i) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and (ii) 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."

In accordance with the foregoing, the installation of linoleum over the floor of an entire room by means of cement constitutes a capital improvement to real property. This is so irrespective of the nature of the floor over which it is installed. S & Y Floor Covering, State Tax Commission Advisory Opinion, TSB-H-81(50)S; Opinion of Counsel, August 19, 1965, 1965 NYTB v. 3, p.41. The distinction made by the contractor in the present instance is in fact applicable to carpeting, but not to lineoleum. S & Y Floor Covering, supra; Matter of Norman W. Ayers, State Tax Commission, TSB-H-82(162)S.

DATED: July 27, 1984

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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