

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

TSB-A-90(5)S
Sales Tax
February 8, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891228A

On December 28, 1989 a Petition for Advisory Opinion was received from Robert E. Harrison, 912 Eileen Terrace, Woodmere, New York 11598.

The issue raised by Petitioner, Robert E. Harrison, is whether the purchase of a replacement of an electric wall oven constitutes a capital improvement, exempt from the imposition of sales tax.

Petitioner would like to replace the existing electric wall oven located in the kitchen of his home. The existing wall oven, which is 15 years old, is in a permanent hole in the kitchen cabinets. The oven is connected directly into a separate electrical line running into the rear of the cutout. The oven itself is fastened to the rear and side walls of the cutout with bolts.

Petitioner's local appliance store will remove the old oven, furnish a new oven, and properly install the new oven (both the electrical and physical annexations) for a total cost of \$750.00. The wall oven is intended to become a permanent part of the house, and when the house is sold, the wall oven will be sold as an integral part of the real property.

Section 1101(b)(9) of the Tax Law and Section 527.7 of the Sales and Use Tax Regulations define the term capital improvement as 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.

Section 1105(a) of the Tax Law imposes a tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1105(c)(3) of the Tax Law imposes a tax on receipts from the service of "Installing tangible personal property...except for...installing property which, when installed, will constitute an addition or capital improvement to real property..."

The installation of built-in ovens constitute capital improvements within the meaning and intent of Section 1101(b)(a) of the Tax Law. Likewise the replacement of such ovens constitute capital improvements. See New York State Department of Taxation and Finance, New York State

TSB-A-90(5)S
Sales Tax
February 8, 1990

and Local Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property,
Publication 862 (7/87), at 15.

Therefore the purchase of an installed replacement of a built-in electric oven by the Petitioner from his local appliance dealer 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.

DATED: February 8, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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