

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

TSB-H-81 (50) S
Sales Tax
March 30, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810123B

On January 23, 1981 a Petition for Advisory Opinion was received from S & Y Floor Covering, 240 Broadway, Brooklyn, N.Y. 11211.

The issues raised are: (1) whether receipts from the service of the installation of linoleum, where the linoleum is installed by means of an adhesive, are subject to sales tax; and (2) whether receipts from the service of the installation of carpeting on a stairway, where the carpeting is trimmed to fit around the spindles or the sides of the stairs, is subject to sales tax.

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

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." 20 NYCRR 527.7.

The installation of carpeting on a sub-floor which is not usable without adding hardwood flooring or some other type of floor covering, as where carpeting is installed over unpainted concrete, plywood or the like, constitutes a capital improvement. However, if the carpeting is installed over a finished floor, such as an existing hardwood floor, such installation would not constitute a capital improvement. The foregoing is applicable to stairways and is in no way affected by any custom fitting which may be involved.

The installation of linoleum by means of a cement constitutes a capital improvement to real property regardless of the type of floor over which it is installed.

Where carpeting or linoleum is installed in such a manner that it constitutes a capital improvement to real property the charge for such installation is not subject to sales tax. It is to be noted that a contractor performing a capital improvement to real property must pay sales or use tax with respect to the materials used by him, inasmuch as he is the ultimate consumer of the tangible personal property incorporated into the project.

DATED: February 19, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau

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