
Opinion of the Tax Commissioner

Date Issued: May 23, 1991

Opinion No: 91-0001

Tax: Sales/Use

XXXX
XXXX
XXXX

Subject: Vendor/Construction Contractor

Dear XXXX:

You have requested my opinion regarding the application of the sales tax on material purchased by XXXX (hereinafter refer as taxpayer). Specifically, you have asked that I address the following question:

QUESTION FOR WHICH OPINION IS REQUESTED

What is the proper treatment of sales tax at the time of purchases if the taxpayer is not certain as to the ultimate use of the materials to be purchased?

FACTUAL BACKGROUND

- (1) The taxpayer is engaged in the business of selling floor covering materials, including carpet, tile, vinyl, parquet and hardwood flooring.
- (2) The taxpayer is both a vendor and a construction contractor.
- (3) The taxpayer is not certain as to the amount of purchases that attribute to resale and construction contract.
- (4) It is estimated that about 50 of the current inventory are resold.
- (5) The taxpayer is currently holding a consumer use tax account.

OPINION

The taxpayer engaged in the business of both resale and providing construction contract services, and is not certain as to the amount of material purchased to be used in either category at the time of the purchases. Under this factual situation, the taxpayer may claim exemption for resale at the time the purchases are made. When material other than carpet is consumed in construction contracts, use tax should be accrued and remitted through the consumer use tax account. Sales tax should be charged to all retail sales of floor covering materials, including sales

and installation of carpet, unless the customer presents a valid claim of exemption. Carpeting includes carpet padding, tack strips, adhesive, and similar tangible personal property that is an integral and necessary component of a carpet installation transaction.

If the taxpayer is certain at the time of the purchases that certain material will be used in a construction contract, sales tax should be paid at the time of such purchases.

The tax consequences stated in this opinion may be subject to change for any of the reasons stated in R.C. 5703.53(C). It is the duty of the taxpayer to be aware of such changes.

Roger W. Tracy
Tax Commissioner