

## *Ruling 99-02*

Vermont Department of Taxes

Date: May 10, 1999

Written By: George Phillips, Tax Policy Analyst

Approved By: Sean P. Campbell, Commissioner of Taxes

You have requested a ruling as to the application of Vermont sales and use tax to the sales and installations of floor covering by your client, [corporation].

### FACTS

This ruling is based on your facts provided in your letter of September 10, 1998, which are as follows:

[Corporation] operates from several locations in Vermont from which it sells and installs carpet, carpet tile, linoleum, sheet vinyl, vinyl tile, ceramic tile, terrazzo, marble, hardwood and cove base flooring. These facilities service the residential market and are referred to as "Retail Locations." [Corporation] also has "Contractors" who service the commercial market. None of these Contractors are located in Vermont but Contractors located in border states enter Vermont to install flooring.

Typically, a residential customer (homeowner) visits one of [corporation's] Retail Locations, chooses the desired floor and contracts with [corporation] for the installation. The contracts may be either for a fixed sum or for separately stated prices for the flooring and the installation. [Corporation] usually then arranges with independent installers to perform the installation. Less commonly, a customer may purchase only the flooring, arranging privately for the installation or the customer may perform the installation, referred to as "over-the-counter sales". A Retail Location maintains inventories of pads, limited sub-flooring supplies, and minor amounts of materials. Most materials are ordered on a per-job basis.

A Contractor does not maintain a sales facility and obtains business by bidding on flooring contracts offered by general contractors or owners of commercial structures. Contractors may on occasion sell flooring "over-the-counter." These sales are less than 5% of a Contractor's business and represent accommodations to large commercial accounts or disposal of remnants. Contractors maintain only a small amount of inventory. Contracts may be based on a separate charges for material and labor, or a single charge and may have various provisions for calculating the price (for example, cost-plus).

## Installation Processes

Wall-to-wall carpet can be installed by two methods, tack strips or glue. Under the tack strip method, the installer staples or glues a carpet pad to the subfloor. The carpet is then attached over the pad to a tack strip which is nailed to the edges of the subfloor. Under the glue method, the carpet is glued directly to the subfloor. Removing tacked down carpet usually tears the carpet and damages the subfloor. To remove glued carpet the customer must cut the carpet and rip it up. The carpet is not reusable, and the surface floor may need repair before a new floor is installed.

Carpet tile can be installed by two methods, glue or release adhesive. Under the glue method, the tile is glued directly to the subfloor. It may be removed after installation but is generally only removed and replaced when damaged or worn. Thus, glued down carpet tile is not normally reusable. Further, the subfloor may need repair due to residual glue. Under the release adhesive method, carpet tile is attached to the floor by an adhesive which allows for easier removal and/or movement. As a practice, carpet tiles are not moved until they are damaged or worn. Again, the subfloor may need repair due to residual adhesive.

To install sheet vinyl and vinyl tile floors, the installer creates a smooth subsurface over the subfloor and underlayment. The installer then glues vinyl to the underlayment. Vinyl is usually removed with a hammer and chisel or like instruments. Sometimes heat is used to soften the glue. Removing sheet vinyl destroys the flooring and damages the subfloor.

Ceramic tile generally requires the installer to trowel a thin bead of mortar on the floor and then set a durock board into the mortar. The durock board is also secured by nails. The ceramic tile is then glued to the durock board. To remove the ceramic tile, a jackhammer or crowbar is required to break up the ceramic tiles and durock layer, thus destroying the tile and damaging the subfloor. Ceramic tile can also be installed on a recessed floor by setting the tiles in a bed of concrete. Using this method, there is no way to remove the tile without destroying the tile and subfloor.

Terrazzo is installed in a mud process similar to that employed in laying concrete. The installer pours, smoothes, and hardens the material onto the subfloor. There are not tiles laid. Removal destroys the terrazzo and subfloor.

Marble is installed by precasting the marble in blocks and setting it in mortar. The installation process is similar to installing bricks. Removing the marble floor would destroy the marble and the subfloor.

Hardwood floors are generally installed over an existing underlayment. The underlayment is attached through the board with ring-shanked nails. The installer trowels out glue and sets the wood floor. Boards are then nailed together on the subfloor. The hardwood floor could be removed with a hammer and chisel or like instruments. The removal would generally damage the hardwood floor, destroy the underlayment, and damage the subfloor.

Cove base is a transition piece of rubber material used to finish or cover the edges of walls. Removing cove base requires stretching and bending it out of shape. Cove base is not reusable after removal.

## ISSUE FOR RULING

You have asked for a ruling on two questions.

Whether the sale and installation of each of the floor coverings, installed by the methods outlined above, is a sale of tangible personal property on which tax must be collected or an improvement to real estate

Whether the sales tax consequences of a transaction depend on the form of a contract (fixed price rather than time-and-materials, for example).

## CONCLUSIONS

The installation of flooring and cove base as described above is alteration or improvement of real property. Sales of such flooring to [corporation] are sales at retail when [corporation] purchases for the purpose of such installations. 32 V.S.A. § 9701(5). [corporation] method of billing or method of computing its charge is not a factor in determining whether it is acquiring property for the purpose of improving or altering real property. Because these sales to [corporation] are sales at retail, they are subject to sales tax pursuant to 32 V.S.A. § 9771(1) when the sale is within Vermont. Use tax is due pursuant to 9773(1) applies when property is brought into the state if no sales tax was paid on the purchase. The transactions between [corporation] and its customer are not sales at retail and no tax is collected from this customer, regardless of the form of the bill.

Over-the-counter sales by either retail locations or contractors, where [corporation] is not responsible for installation, are sales at retail and tax must be charged to the customer.

This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.