

REQUEST LETTER

05-007

COMPANY
ADDRESS

I am contacting you to request a private letter ruling. We sell, manufacture, and install custom window coverings, which include the following: Louver-type blinds, plantation shutters, vertical blinds, and shades. All products are custom built to within 1/16th of an inch for each window.

History:

Up until 1992 we charged sales tax on the total sales price of an order. In 1992 we attempted to charge a NAME, sales tax on his order. He informed us that it was inappropriate to charge sales tax as our blinds were converted to real property. We contracted NAME and his firm, FIRM, to obtain a letter ruling related to this issue. The commission's response letter, dated October 9, 1992, stated that all louver-type blinds are considered real property once installed. Based on this letter we have paid use tax on our material costs rather than collect sales tax from our customers for all order where we install our products.

We were recently audited for the period July 2001 through June 2004. As a result of the audit, the auditing division issued this statement "The Auditing division has determined that the blinds that you install do not become part of the realty and therefore should be treated as a sale of tangible personal property for tax purposes." We feel our blinds clearly meet the definition of real property as discussed in the succeeding paragraphs.

Discussion:

Several documents provide insight in the determination of real versus personal property. Title 59-2-102(16) of the Code provides that a fixture is deemed an improvement if attachment to the land is essential to the use of the item and that the manner of attachment suggests that the item will remain for its useful life, or that removal would cause substantial damage to the structure to which it is attached. Our blinds meet these criteria: blinds are useless when not attached, the method of attachment is the same used in most permanent fixtures within a home, and removal of our blinds causes damage to the structure.

The next source of insight is the tax commission rulings. Rule 865-19S-78 reiterated the code relating to permanent attachment. Rule 865-19S-58 allows that items, which are incorporated into real property, regardless of permanency of attachment, are deemed construction materials. The rule further illustrates examples of items, which would not be deemed real property, none of which would apply to our products.

The source of the commission's position comes from Publication 42. On page 2, the guide indicates that "drapes, curtains, blinds and rods, are not considered real property." We agree

with the commission that drapes, curtains, and rods, may not be deemed personal property for several reasons, first, these products are not custom fit to a specific window opening and can be easily moved from the window to another. Second, many people will take their draperies with them when they move. Lastly, draperies are fairly easily resized and can be used on a number of different size windows. These are not the case for our blinds. Our blinds are fitted to within 1/16th of an inch of the interior of the window opening. They cannot be moved to another window and cannot be resized. No one takes their blinds with them when they move because they will not fit any of the windows in the new home. Even when a window is a standard size, the variation that occurs between the framers, and drywallers makes fitting blinds into similar size openings almost impossible. We have a pile of hundreds of blinds, which were measured incorrectly, by less than an inch, which could not be used in the desired openings.

The commission issued a letter ruling on April 15, 2003 with respect to the taxation of window coverings. Within the letter the tax commission states that the classification of shades and blinds is difficult to determine and list the following factors as determinants: Customization, likelihood of removal, and difficulty of installation and removal. They make this statement, "In general, the more customization required to fit a product to a specific window, the more likely the window treatment has become part of the underlying realty after its installation." We submit that there is not a window treatment more custom than ours. We build our products custom for each and every opening. We customize size, materials, colors, location of controls, type of valance, etc. Further, our headrail is made of steel, with a steel rod inside, making alteration very hard without the proper equipment.

Some applicable case law is discussed in a response letter from the commission dated July 25, 1995. These would indicate that intent is a key determinant for the courts when deciding whether to treat something as real property. It is clear that our products are intended to remain installed for their entire useful life. Further courts have barred us from repossessing our products when the owners are in default on our contracts, and our only recourse has been to lean the realty.

Several key issues were discussed in meetings with the auditor, auditing supervisors, assistant director, and commissioners. The following are a discussion of two of these issues.

Method of attachment – We contend that our blinds are attached in a method that would indicate permanency. We use several screws in each mounting bracket for normal installation into wood and drywall. Use of additional methods may be required for installation into tile or concrete. This method of attachment is consistent with many items within the home that are deemed real property by the commissions i.e., cabinets, railings, light fixtures, mirrors, shelves, electrical outlets, switches, hinges, etc. Further, our attachment exceeds the sufficiency of other items deemed real property by the commissions including doors, moldings, chair rails, toilets, shower heads, screens, windows, light bulbs etc. These items are either attached by very small nails, screwed into place, or held by a small amount of easily removable caulking. Further, there are items in the home that are deemed real property despite their lack of attachment i.e. range, built-in appliances, and heating/cooling units.

We conclude that method of attachment is but a single determinant in deciding whether an item is real or personal property. Even if the commission could contend that our method of attachment were insufficient, this alone would not preclude our status as real property contractors. Rather, the other determinants seem to carry more weight in the determination process, as indicated by the 2003 response letter.

Damage – We content that our blinds cause significant damage upon removal. In all cases removal will leave holes in the structure. Further, heat in a window opening will often cause the mounting brackets to adhere to the paint over time. Removal after adhesion will likely remove significant amount of paint and drywall. In the case of installation onto metal doors or other non-painted surface, repair of the resulting holes can be extremely difficult and expensive. Further, the auditing division has indicated that damage is not always necessarily physical. They contend that in the case of a range, the removal leaves an unsightly hole even though no physical damage occurs. Further, damage could be deemed to be caused by a reduction in value of the realty. We content that our blinds would also meet this criterion, as blinds are known to increase the market value of a home. This is easily verifiable through review of a home sale listing which in many cases will list the type of window covering. Appraisers add value to a home based upon the type of window covering the home contains. Removal of our blinds cause both physical and intangible damage to the realty.

Our products are clearly part of the real estate once installed. We thank you in advance for your prompt response to this letter so we can assure that we are in proper compliance.

Sincerely,
CFO/NAME
CFO

RESPONSE LETTER

July 1, 2005

CFO/NAME
BUSINESS NAME
ADDRESS

RE: Private Letter Ruling Request – Classification of Blinds for Sales and Use Tax Purposes

Dear CFO NAME,

The Commission has received your private letter ruling request concerning the sales and use taxation of custom-made blinds, shutters, and shades. Specifically at issue is whether the custom-made blinds, shutters, and shades that you sell and install remain personal property or become part of the underlying realty upon installation.

Previously, the Commission has determined that plantation shutters lose their identity as personal property once installed to realty. Furthermore, in two private letter rulings (*USTC Private Letter Ruling 03-003* and *USTC PLR 03-010*), the Commission has ruled that a number of factors must be considered before deciding whether window coverings, and specifically blinds, becomes part of the underlying realty to which they are installed; as follows:

However, the classification of custom-made blinds is more difficult to determine, depending on how much customization is required to produce them, how likely it is that the items will be moved to another window, and how difficult it is to install and remove them after installation. There is no bright line by which to denote which items become real property versus those that remain personal property. In general, the more customization required to fit a product to a specific window and/or the more permanently the blinds are attached to a building, the more likely the window treatment has become part of the underlying realty after its installation. On the other hand, blinds that are easily removable from their window openings would likely remain tangible personal property. We realize there is a certain amount of subjectivity in determining whether or not custom-made window blinds become part of the underlying realty upon installation. . .

The Commission continues to believe that such factors affect the classification of window coverings once installed and is consistent with language found in Utah Admin. Rules R865-19S-58 and R865-19S-78. *USTC Publication 42* explains that “[d]rapes, curtains, blinds, and rods are generally considered to be personal property even when attached because the method of affixture is insufficient to convert these items to real property.” While it may be true that the level of affixture is relatively insignificant for certain window coverings, all factors listed in the prior private letter rulings should be considered when classifying window coverings once installed. Let us address how each of the factors listed in the prior rulings relate to the custom-made blinds, shutters, and shades you sell.

1) Customization. The Commission has previously ruled that the degree of customization required to produce a window covering is directly related its being considered real property upon installation. You state that all of the blinds, shutters, and shades you sell are custom built to within 1/16th of an inch for each window and that you customize the size, materials, colors, location of controls, and type of valance or each item. If each of the window coverings you sell is sized to fit the individual windows in the manner you describe, the Commission would consider each of the window coverings to have been customized.

2) Transference between Locations. Another factor to consider in classifying a window covering installed to realty is whether the item will remain in place for its useful life or whether the property owner is likely and able to move the item upon relocation. You state that your blinds are fitted to within 1/16th of an inch of the interior of the window opening, that they cannot be moved to another window, and that they cannot be resized. You

further state that no one takes their blinds with them when they move because they will not fit any of the windows in the new home. Furthermore, you explain that “[e]ven when a window is a standard size, the variation that occurs between the framers, and drywallers makes fitting blinds into similar size openings almost impossible. We have a pile of hundreds of blinds, which were measured incorrectly, by less than an inch, which could not be used in the desired openings.” You have also explained that it is difficult to alter the window coverings you sell to move them to other windows and that removing these items, once installed, results in damage to the underlying realty requiring repair. If these assertions are correct, the Commission would consider it likely that the window coverings you sell will remain with the underlying realty, even if the property owner were to sell and move all of its personal property to another location.

3) Method of Attachment. The Commission also considers the degree of attachment or integration into the underlying realty to be one factor to consider when classifying a window covering after installation. You contend that the blinds, shutters, and shades you sell and install are attached to the underlying realty in a manner that would indicate permanency. You state that you “use several screws in each mounting bracket for normal installation into wood and drywall. Use of additional methods may be required for installation into tile or concrete.” Although you suggest that such attachment is sufficient to convert the blinds into real property, we do not agree completely. Attachment of the blinds, as you have described, is as permanent as some fixtures, but less so than others. The Commission would not consider such attachment sufficient for a window covering to be considered part of the underlying realty in and of itself. Nonetheless, we recognize that the attachment is for more than temporary purposes.

4) Other Factors. Although you did not specifically mention this, the Commission has observed that typical residential real estate contracts require venetian blinds to remain with the home upon sale. This inclusion is consistent with other items often considered to be real property such as heating, plumbing, and electrical fixtures.

When all of these factors are considered, the Commission believes that the custom-made blinds, shutters, and shades that you have described become part of the underlying realty upon installation. Accordingly, you would not charge sales tax on your contracts to sell and install such items. Instead, you should pay sales tax on your purchase of these items from your suppliers. Of course, should you sell custom-made window coverings without the contract also including installation, you have sold tangible personal property and should collect sales tax on the price you charge your customer.

Our ruling is based on the facts represented in your letter. Should the facts be otherwise, our response might be different as well. Please contact us if you have any other questions.

For the Commission,

Pam Hendrickson

Commission Chair

Cc: 2ND NAME

MBJ/KC

05-007