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## Letter Ruling 94-6: Sales Tax on Sales of Custom Closets

August 23, 1994

You request a letter ruling concerning the application of the Massachusetts sales and use tax, G.L. c. 64H and c. 64I, to the furnishing of custom closets to customers by \*\*\*\*\* (the Company). Specifically, you ask whether the Company is a construction contractor providing real property improvements or a vendor of tangible personal property for purposes of the Massachusetts sales and use tax.

### I. FACTS

You describe the facts as follows. The Company builds closet storage systems which are designed specifically for the needs of an individual customer, are custom fabricated to the specific dimensions of the customer's storage space, and are then physically incorporated into real property.

As a general rule, the business operation is a three-step process. The first step begins with the initial contact, which occurs when a customer is interested in a custom closet space and a Company designer comes to the customer's home to determine the customer's specific needs, to measure the exact dimensions of the space where the unit will be constructed, and to take into consideration any unique features (for example, the door placement and lighting are as critical to the ultimate design as the width and depth of the space).

The second step occurs after the customer's approval of the completed closet design and a contract is executed between the Company and the customer. The Company, in its workshop, constructs each closet unit to the specific design agreed upon with the customer. No two closet units are exactly alike because of differences in space, size or construction.

The final step in the process is when the fabricated, unassembled materials are taken to the customer's home, where the existing closet structure is removed and the custom designed materials are assembled and installed into the home. The custom closet unit is physically incorporated into the real property, beginning with a steel rail which is affixed to the walls of the home. When completely installed, the unit is completely fitted on three of the four walls and cannot be removed without substantial damage to the unit itself and to the underlying walls.

### II. RULING

For the reasons discussed below, we rule that when the Company installs closets that are custom

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designed and installed in a manner intended to be permanently affixed to real property, the Company is a construction contractor providing real property improvements and is responsible for the sales and use tax on the materials it buys and consumes in executing its contract.

### III. DISCUSSION

Massachusetts imposes a five percent sales tax on retail sales of tangible personal property in Massachusetts by any vendor. G.L. c. 64H, § 2. In Massachusetts the general sales tax rule for contractors and subcontractors who construct, reconstruct, alter, improve, remodel and repair real property ("construction contractors") is that contractors are the consumers of tangible personal property purchased by them for the performance of their contracts. See Ace Heating Service, Inc. v. State Tax Commission, 371 Mass. 254, 256-57; Letter Rulings 85-68, 88-8; Emergency Regulation No. 12.[1] As consumers of tangible personal property, construction contractors pay sales tax to their suppliers on their purchases. See Ace Heating, 371 Mass. at 256-57; Letter Rulings 82-121, 82-122, 88-8. The transfer of real property by a construction contractor to a buyer is not subject to sales tax. See G.L. c. 64H, § 2.

The general sales tax rule for construction contractors does not apply to sales contracts in which persons act as retailers selling tangible personal property in the same manner as other retailers, and install a complete unit of a standard item of tangible personal property, which requires no further fabrication other than installing, applying or connecting services. Persons acting as retailers of tangible personal property are not construction contractors and must collect tax on the sales price of the item from the buyer. See Letter Rulings 85-68, 88-5. Any separately stated charges for installation of the item are not taxable. See G.L. c. 64H, § 1; Letter Rulings 85-25, 88-8.

The fact that a standard item of tangible personal property may become a fixture to real property does not alter the operation of the rule for complete units of standard items of tangible personal property. Examples of complete units of standard equipment include water softeners to be affixed to real property, Letter Ruling 85-25; wireless alarm systems to be affixed to real property, Letter Ruling 85-68; awnings or blinds and electrical fixtures to be installed, Emergency Regulation No. 12.

A contract for custom closets is a construction contract if it is a contract for the construction, reconstruction, alteration, improvement, remodeling, or repair of real property. See Letter Ruling 88-8; cf. Letter Ruling 85-68. If a sales contract for closets requires a person merely to sell and install a complete unit of standard tangible personal property, such as prefabricated closets or closet components, that person is a vendor of tangible personal property and should charge the buyer sales tax on the full sales price of the closet. See Letter Ruling 88-5.

### IV. CONCLUSION

Under the facts you have presented, we conclude that the Company's contracts for closets that are custom designed and installed in a manner intended to be permanently affixed to real property are construction contracts for the improvement of real property. For the purpose of these contracts the Company is a construction contractor. Under G.L. c. 64H, the Company must pay sales tax on its purchase of construction materials. The Company's charges for custom closets to its customers are not taxable.

Very truly yours,

/s/Mitchell Adams

Mitchell Adams  
Commissioner of Revenue

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[1] The Massachusetts rules on construction contractors were originally published as Emergency Regulation No. 12 in 1966, when the sales tax law was first enacted. Because Emergency Regulation No. 12 lapsed without a hearing and was never promulgated as a permanent regulation, the rules in the Emergency Regulation do not have the force of law. But the Supreme Judicial Court and the Department of Revenue both have recognized Emergency Regulation No. 12 as a contemporaneous interpretation of the sales tax law, entitled to weight and deference. [See \*Ace Heating Service\*](#), 371 Mass. at 256-57; Letter Ruling 88-8.