TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #99-33

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WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of sales and use tax to kitchen exhaust hoods.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

(A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
(B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
(C) The applicable law must not have been changed or amended;
(D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
(E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] is principally engaged in the manufacture and fabrication of sheet metal products at its [CITY], Tennessee, location. As part of its business, the taxpayer fabricates and installs kitchen exhaust hoods, referred to in the facts presented as “vent-a-hoods”.

The vent-a-hoods at issue in this ruling are generally made for use in a restaurant, hotel, or other type of commercial kitchen. They dissipate the smoke and steam produced by ranges and cooking equipment. The vent-a-hoods ventilate the air in the kitchen areas in order to ensure the proper operation of the kitchen equipment.

The vent-a-hoods are custom built to fit the equipment over which they will hang to provide ventilation. It is not unusual for a piece of kitchen equipment to be moved for use at another location, and when that occurs the vent-a-hood is moved with it. Because the taxpayer usually performs the original installation, the taxpayer is often hired to move the hoods to the new location.

The vent-a-hoods are attached by metal brackets, usually to the ceiling, but are easily detachable without damage to the building or to the hood. They are attached to duct work that takes the air drawn through the hood out of the room. The duct work is not at issue in this ruling.

The vent-a-hoods do not relate to the operation or maintenance of the building itself and are not permanently attached to the realty.

The taxpayer generally sells vent-a-hoods to a middleman who in turn sells the vent-a-hood along with the accompanying kitchen equipment to the operator of a restaurant, hotel or other type of commercial kitchen. In addition to the vent-a-hood, the middleman also buys installation of the vent-a-hood from the taxpayer, all of which is resold to the consumer.

QUESTION

For sales and use tax purposes, do the vent-a-hoods described in the facts remain tangible personal property following installation?

RULING

Yes, the vent-a-hoods do remain tangible personal property following installation. It should be noted, however, that this ruling is based on the particular facts provided. Whether an item is realty or personalty is determined by applying the law of fixtures and must be analyzed on a case by case basis. A given item may be realty under certain circumstances and tangible personal property under different circumstances. Exhaust hoods or similar items could be realty under slightly different or additional facts.

ANALYSIS

Whether tangible personal property that is installed remains tangible personal property after installation or becomes part of the realty must be determined on a case by case basis by applying the law of fixtures to the factual circumstances that exist.

The primary test for distinguishing tangible personal property from fixtures is not so much the manner in which the property is affixed to the realty as it is the intention with which the property is connected with the realty. The Supreme Court has stated the test as follows:

> "In Tennessee only those chattels are fixtures which are so attached to the freehold that, from the intention of the parties and the use to which they are put, they are presumed to be permanently annexed, or a removal thereof would cause serious injury to the freehold. The usual test is said to be the intention with which a chattel is connected with realty. If it is intended to be removable at the pleasure of the owner, it is not a fixture."

Magnovox Consumer Electronics v. King, 707 S.W.2d 504, 507 (Tenn. 1986)(quoting *Hickman v. Booth*, 173 S.W.2d 438 (Tenn. 1974)).

Such intent may be shown by examining both objective and subjective factors. *See Hubbard v. Hardeman County Bank*, 868 S.W.2d 656, 660 (Tenn. Ct. App. 1993). Objective factors include the type of structure, the mode of attachment, and the use and purpose of the property. *Harry J. Whelchel Company v. King*, 610 S.W.2d 710, 713-714 (Tenn. 1980). The subjective factor is the expressed intent, if any, of the parties. *See*, *Id*. Tangible personal property becomes a part of the realty, though, if removing it would seriously damage the building to which it is affixed. *Process Systems, Inc. v. Huddleston*, No. 02A01-9503-CH-00063, 1996 Tenn. App. LEXIS 695 (Tenn. Ct. App. October 25, 1996)(citing *Memphis Housing Authority v. Memphis Steam Laundry-Cleaners, Inc.*, 463 S.W.2d 677, 679 (Tenn. 1971)). Tangible personal property also becomes realty if removal would destroy its essential character as personalty. *Id*. (citing *Green v. Harper*, 700 S.W.2d 565, 567 (Tenn. Ct. App. 1985)).

Thus, whether the personal property at issue becomes part of the realty depends on the particular factual circumstances that exist. In *Welchel* for example, the court looked at both the stated intent of the farmers as well as the objective factors noted above and reached the conclusion that the grain bins at issue were personalty. *Harry J. Welchel Co.*, 610 S.W.2d at 714. Although the bins were large in size and bolted to a concrete base, the court found that they were attached to the concrete base solely for the purpose preventing them from blowing over in a high wind when empty. *Id*. Also, they were financed as

personal property, sold at foreclosure as personal property, and installed by lessees on leased farms. *Id*. Likewise, the court in *Hubbard* found that two one-story branch bank buildings were personal property because they were constructed to be portable, such that they could be moved or sold as market conditions or need for the buildings changed. *Hubbard*, 868 S.W. 2d at 660. Further, the ground leases expressly provided that the buildings were not to become fixtures. *Id*.

In contrast, the court in *General Carpet Contractors, Inc. v. Tidwell*, 511 S.W.2d 241 (Tenn. 1974), examined carpet which was laid using the tackless strip method and was therefore easily removable. The court found that the carpet became realty because the parties installed it with the intent that it remains in place for the length of its useful life. *Id*. at 243. The method of installation simply allowed for easy replacement of the carpet when it was worn out. *Id*. In another case, the court found that removal of the conveyor system at issue would damage the building and destroy the essential character of the conveyor system. *Process Systems, Inc.*, *supra*. Accordingly, the conveyer system was held to be an improvement to real property. *Id*.

Applying these principles to the facts provided in the ruling request, the vent-a-hoods at issue here remain tangible personal property following installation.

The facts do not indicate any expressly stated intent of the parties. However, applying the objective factors discussed above indicates an intent that the vent-a-hoods remain personal property following installation. First, looking at the mode of attachment, the facts provide that the hoods are easily detachable from the ceiling. Second, regarding the use and purpose of the property as well as the type of structure, the vent-a-hoods are custom built to fit a particular piece of equipment over which it will hang to provide ventilation. It is not unusual for a piece of kitchen equipment to be moved for use at another location. When that occurs, the vent-a-hood is moved to the new location as well. Moving these hoods is often performed by the taxpayer. Further, the vent-a-hoods do not relate to the operation or maintenance of the building itself. Instead, they are designed to ventilate the air around a particular piece of equipment that can be moved to a different location. There is no indication in the facts that the hood is intended to remain affixed to the property for the duration of its useful life.

Finally, it is expressly provided in the facts that removal of the vent-a-hood from the real property will not damage the building or destroy the essential character of the vent-a-hood.

Accordingly, the vent-a-hoods described by the taxpayer do remain tangible personal property following installation.

David A. Gerregano
Tax Counsel

APPROVED: Ruth E. Johnson
Commissioner

DATE: 12/14/99