

TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 20-11

Revenue rulings are not binding on the Department. This ruling is based on the particular facts and circumstances presented and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The application of the Tennessee sales and use tax to the installation of household appliances.

SCOPE

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

FACTS

The Taxpayer is a major manufacturer of household appliances. As part of its business activities in Tennessee, the Taxpayer sells appliances to residential customers, as well as building owners renting or leasing residential property units (collectively, the "End Users"). The Taxpayer charges the End Users Tennessee sales tax on all appliance sales.

The Taxpayer contracts with a third party to install appliances for End Users and the Taxpayer's invoices include a separate line item installation charge. The specific household appliance types (collectively, the "Appliances") manufactured by the Taxpayer and subsequently installed in the End Users' residential properties are as follows:

- Washing Machines and Dryers. The installation of the Taxpayer's washing machines and dryers typically involves placement of the appliance on a flat surface for connection of the standpipe, which is followed by the connection of supply hoses, power cords, and dryer venting.
- Dishwashers. The installation of dishwashers manufactured by the Taxpayer includes the cutting of a hole for water supply and discharge, the connecting of the water lines, followed by the installation of the drain line and connection to a power source. Dishwashers are bolted to the adjacent cabinetry and/or underside of the countertop.
- Free-standing Refrigerators. The Taxpayer's free-standing refrigerators are installed by drilling a hole through the cabinet wall to establish a connection between the appliance and the waterline. The installation is completed by connecting the appliance to a power source.
- Built-in Refrigerators. The installation of the Taxpayer's built-in refrigerators requires an electrician to physically connect the electrical cable that comes furnished with the product

directly into the wiring of the residential structure, as opposed to plugging the appliance into a power outlet. The built-in refrigerators have an inset door such that the appliance sits flush with the surface of the cabinetry. After installation, the built-in refrigerators have no visible compressor vents and may also have cabinet paneling to camouflage the appliance.

- Built-in Microwaves. The Taxpayer's built-in microwaves generally do not include finished exterior sides. They may be installed by cutting a hole into an existing cabinet and securing the microwave inside the opening with bolts, or they may be installed into cabinetry that is custom designed to accommodate the size of the particular microwave. Some of the microwaves can be plugged into a power source and some are hardwired to a dedicated circuit. The microwaves either recycle the air or the air from the appliance is removed through a series of vents or ducts that carry the air outside. After installation, the appliances will appear flush with the cabinetry.
- Free-standing Range/Ovens. The installation of the Taxpayer's free-standing range/ovens combination appliances involves connection of the appliance to a gas line or power source. This sometimes requires the services of an electrician or heating, ventilation, and air conditioning ("HVAC") technician to adjust the orifices on the appliance burners to correct the gas flow if the appliance uses propane gas.
- Built-in Range/Ovens. The Taxpayer's built-in range/oven combination appliances come in both hardwired and non-hardwired varieties, but installation generally requires the services of an electrician to connect the appliance to the power source. The appliance appears flush with the surface of the countertop after installation.
- Free-standing Icemaker. The installation of the Taxpayer's free-standing icemakers typically involves the drilling of a hole in the cabinet wall separating the appliance and the space underneath the sink, and the subsequent connection of the appliance to a water line and power source.
- Built-in Icemaker. The Taxpayer's built-in icemakers require the connection of an electrical cable to a dedicated circuit in the household wiring. They are also connected to a water line. When installation is complete, the appliance appears flush with the countertop surface and may be camouflaged with cabinet paneling.
- Electric or Gas Cooktop. The Taxpayer's electric and gas cooktops are installed directly into the kitchen countertop. The installation process involves the clamping of the cooktop into a customized opening in the countertop, the connection of the appliance to a gas or electrical power supply line by an electrician or HVAC technician, and, in the case of appliances powered by propane gas, the adjustment of orifices on the burners to correct the gas flow.

Although the removal process for the Taxpayer's Appliances varies based on whether the appliance is hardwired, built-in, or free-standing, the Taxpayer's intent upon installation of all the appliances for both types of End Users is that the appliances remain in place for the duration of their useful life.

RULING

Is the installation of the Taxpayer's Appliances subject to the Tennessee sales tax?

Ruling: If a particular appliance remains tangible personal property upon installation, the installation of the appliance will be subject to the Tennessee sales tax. If a particular appliance becomes affixed to realty upon installation, the installation of the appliance is not subject to the Tennessee sales tax.

In the Taxpayer's case, the following appliances remain tangible personal property upon installation: washers, dryers, free-standing refrigerators, free-standing range/ovens, and free-standing icemakers. The installation of these appliances is subject to the Tennessee sales tax.

Conversely, the following appliances become affixed to realty upon installation: dishwashers, built-in refrigerators, built-in microwaves, built-in range/ovens, built-in icemakers, and electric and gas cooktops. The installation of these appliances is not subject to Tennessee sales tax.

ANALYSIS

Under the Retailers' Sales Tax Act,¹ the retail sale in Tennessee of tangible personal property and specifically enumerated services is subject to the sales tax, unless an exemption applies.² One specifically enumerated service taxable at retail is the installation of "tangible personal property that remains tangible personal property after installation ... where a charge is made for the installation, whether or not the installation is made as an incident to the sale of tangible personal property ..., and whether or not any tangible personal property ... is transferred in conjunction with the installation service."³

TENN. COMP. R. & REGS. 1320-05-01-.27 (2016) ("Rule 27") provides further clarification regarding the taxability of such charges. According to Rule 27(1), "Charges for installing tangible personal property that remains tangible personal property after installation are subject to sales and use tax. The tax is due from the dealer regardless of whether the dealer or someone acting on the dealer's behalf installs the property."⁴

However, TENN. CODE ANN. § 67-6-209(b) (Supp. 2019) provides that "[w]here a contractor or subcontractor ... uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person," the contractor must pay use tax on

¹ Tennessee Retailers' Sales Tax Act, ch. 3, §§ 1-18, 1947 Tenn. Pub. Acts 22, 22-54 (codified as amended at TENN. CODE ANN. §§ 67-6-101 to -907 (2018 & Supp. 2019)).

² "Retail sale" is defined as "any sale, lease, or rental for any purpose other than for resale, sublease, or subrent." TENN. CODE ANN. § 67-6-102(76) (2018). TENN. CODE ANN. § 67-6-102(78)(A) defines "sale" in pertinent part to mean "any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration."

³ TENN. CODE ANN. § 67-6-205(c)(6) (2018). "Tangible personal property" includes "property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses." TENN. CODE ANN. § 67-6-102(89)(A).

⁴ TENN. COMP. R. & REGS. 1320-05-01-.27(1) (2016).

the purchase price⁵ of such tangible personal property unless the property was “previously subjected to a sales or use tax, and the tax due thereon has been paid.” Similarly, Rule 27(4) provides that “Charges made for installing tangible personal property which becomes a part of real property, are not subject to sales and use tax. The person so installing the property shall be liable for any sales and use tax that may be due, if any, on the property bought and/or used in making the installation.”⁶ In summary, Tennessee law requires a contractor making improvements to real property to pay sales or use tax on any tangible personal property used or installed under the contract, unless tax has already been paid.

Here, The Taxpayer charges the End Users Tennessee sales tax on all appliance sales. Therefore, under the facts provided, the contractor will not owe use tax on appliances it installs that become a part of real property because the appliances were “previously subjected to a sales or use tax, and the tax due thereon has been paid.”⁷ The contractor will, however, be liable for any sales and use tax that may be due on the property bought and/or used in making the installation.⁸

If the appliance becomes affixed to realty upon installation, the installation of the appliance will not be subject to the Tennessee sales tax. However, the Taxpayer should charge sales tax on the installation of the household appliances at issue if the appliance remains tangible personal property following installation. In order to determine whether tax is due on the installation charges, the Department relies upon guidance from the courts.⁹

The issue of whether an item of tangible personal property becomes part of realty depends upon the application of the law of fixtures to the factual circumstances. The Tennessee Supreme Court has held that the question of when an item is considered a fixture must be resolved by ascertaining the intent of the parties.¹⁰ The court has explained that “only those chattels are fixtures which are so attached to the freehold that, from the intention of the parties and the uses to which they are put, they are presumed to be permanently annexed, or a removal thereof would cause serious injury to the freehold.”¹¹

⁵ TENN. CODE ANN. § 67-6-102(75) states that the purchase price “applies to the measure subject to use tax and has the same meaning as sales price.” TENN. CODE ANN. § 67-6-102(82) defines the term “sales price” in pertinent part as “the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise,” without any deduction for items such as the seller’s cost of the property sold.

⁶ TENN. COMP. R. & REGS. 1320-05-01-.27(1) (2016).

⁷ TENN. CODE ANN. § 67-6-209(b) (Supp. 2019).

⁸ *Id.*

⁹ [REDACTED].

¹⁰ *Gen. Carpet Contractors, Inc. v. Tidwell*, 511 S.W.2d 241, 242-243 (Tenn. 1974).

¹¹ *Magnavox Consumer Elects. v. King*, 707 S.W.2d 504, 507 (Tenn. 1986) (quoting *Hickman v. Booth*, 173 S.W.438 (Tenn. 1914)).

Therefore, if the property is intended to be removable at the pleasure of the owner, it is not a fixture.¹² Both objective and subjective factors may show such intent.¹³ Objective factors include the type of structure, the mode of attachment, and the use and purpose of the property.¹⁴ The subjective factor is the expressed intent, if any, of the parties.¹⁵

Courts have also found that tangible personal property becomes a part of realty if removing the personalty would seriously damage the building to which it is affixed.¹⁶ Further, courts have held that tangible personal property is more akin to a fixture if removal would destroy its essential character as personalty.¹⁷

For example, the Tennessee Supreme Court in *Harry J. Whelchel Co.* 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.¹⁸ 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 of preventing them from blowing over in a high wind when empty.¹⁹ Additionally, the bins were financed as personal property, sold at foreclosure as personal property, and installed by lessees on leased farms.²⁰ Likewise, the Tennessee Court of Appeals in *Keenan* found that a large ornamental gate remained personalty despite having a substantial concrete foundation poured for its support that would leave craters were it removed.²¹ The court lent greater significance to the person's stated intention that the gate would be moveable and that it was designed so as to be moveable if necessary.²²

On somewhat different facts, the Tennessee Court of Appeals in *Hubbard* reached a similar conclusion in holding that two one-story branch bank buildings were personal property.²³ It based its ruling on the facts that the leased buildings were constructed to be portable, such that they could be moved or sold as market conditions or need for the buildings changed, and that the leases expressly provided that the buildings were not to become fixtures.²⁴

¹² *Id.*

¹³ *Hubbard v. Hardeman Cnty. Bank*, 868 S.W.2d 656, 660 (Tenn. Ct. App. 1993).

¹⁴ *Harry J. Whelchel Co. v. King*, 610 S.W.2d 710, 713-714 (Tenn. 1980).

¹⁵ *Id.*

¹⁶ *See Process Sys., Inc. v. Huddleston*, No. 101801-I, 1996 WL 614526, at *3 (Tenn. Ct. App. Oct. 25, 1996) (citing *Memphis Hous. Auth. v. Memphis Steam Laundry-Cleaner, Inc.*, 463 S.W.2d 677, 679 (Tenn. 1971)).

¹⁷ *See id.* (finding that conveyor system's essential character would be destroyed upon removal, which required cutting system components into pieces with an acetylene torch) (citing *Green v. Harper*, 700 S.W.2d 565, 567 (Tenn. Ct. App. 1985)).

¹⁸ 610 S.W.2d at 714.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Keenan v. Fodor*, No. M2011-01475-COA-R3CV, 2012 WL 3090303, at *8-9 (Tenn. Ct. App. July 30, 2012).

²² *Id.*

²³ 868 S.W.2d at 660.

²⁴ *Id.*

In contrast, the Tennessee Supreme Court in *General Carpet Contractors* examined carpet that was laid using the tackless strip method and was therefore easily removable.²⁵ The court found that the carpet became realty because the parties installed it with the intent that it remain in place for the length of its useful life. The method of installation simply allowed for easy replacement of the carpet when it was worn out.²⁶ Similarly, the Tennessee Court of Appeals found in *Process Systems, Inc.* that removal of a conveyor system would damage the building in which it was installed and would destroy the system's essential character.²⁷ Accordingly, the conveyor system was held to be an improvement to real property.²⁸

Additionally, the Tennessee Court of Appeals found in *Hermann Holtkamp Greenhouses, Inc.* that a person's greenhouses became realty upon installation based on their enormous square footage, built-in restrooms and lunchrooms, and concrete tunnels.²⁹ The court expressed that each of these facts reflected an intention that the greenhouses remain permanently installed on the property.³⁰

APPLIANCES THAT REMAIN TANGIBLE PERSONAL PROPERTY

As noted above, in determining whether an appliance becomes a part of the realty or remains tangible personal property upon installation, it is important to consider both the expressed intent of the parties³¹ (a subjective factor) as well as objective factors such as the mode of attachment,³² whether removal would cause injury to the real property on which the appliance is installed,³³ and whether removal of the appliance would destroy its essential character as personal property.³⁴ Application of these factors to each of the Taxpayer's appliances listed below leads to the conclusion that all of these appliances remain tangible personal property after installation.

²⁵ 511 S.W.2d at 243.

²⁶ *Id.*

²⁷ 1996 WL 614526 at *3.

²⁸ *Id.*

²⁹ *Hermann Holtkamp Greenhouses, Inc. v. Metro. Nashville & Davidson Cnty.*, No. M2009-00345-COA-R3-CV, 2010 WL 366697, at *9 (Tenn. Ct. App. Feb. 2, 2010).

³⁰ *Id.*

³¹ *Hubbard v. Hardeman Cnty. Bank*, 868 S.W.2d 656, 660 (Tenn. Ct. App. 1993).

³² Tennessee Supreme Court has stated that the mode of attachment is an objective factor that may show the intent of the parties. *General Carpet Contractors*, 511 S.W.2d at 242-243; *Harry J. Whelchel Company*, 610 S.W.2d at 713-714.

³³ The courts have generally held that tangible personal property becomes a part of the realty if removing the personal property would seriously damage the real property to which it is affixed. *Magnavox Consumer Elects.*, 707 S.W.2d at 507; *Process Systems, Inc.*, 1996 WL 614526, at *3; *Memphis Housing Authority*, 463 S.W.2d at 679.

³⁴ The Tennessee Court of Appeals has stated that tangible personal property becomes a part of the realty if removal would destroy its "essential character as personalty." See *Process Sys., Inc.*, 1996 WL 614526, at *3; *Green*, 700 S.W.2d at 567.

1. Washing Machines and Dryers

The mode of attachment for washing machines and dryers demonstrates that these appliances remain tangible personal property following installation. The washing machines only require a connection to the water line and a power source, and the dryers only require a connection to a power source. Based on these facts, it appears that the mode of attachment primarily involves relatively superficial connections to power and utility supplies. The non-invasive nature of the installation indicates that these appliances are meant to be removable at will. Such intent indicates that the washing machines and dryers remain tangible personal property following installation.

Second, the removal of the washing machines and dryers is unlikely to cause injury to the real property on which they are installed. Additionally, installation of the appliances is relatively simple and occurs after the real property itself is constructed. The mode of attachment and the fact that installation occurs after the real property is constructed indicate that no serious damage to the underlying real property would occur and that the residence would remain structurally intact following the removal of the appliances.

Third, the removal of washers and dryers would not destroy their essential character as personal property. A washing machine or dryer may be removed from the location in which it is installed and moved to a new location without physical damage or alteration of the value of the appliance. This demonstrates that the appliances retain their essential character as tangible personal property upon removal and relocation.

All of these factors support the conclusion that the washing machines and dryers remain tangible personal property following installation. As a result, the installation of washers and dryers is subject to the Tennessee sales tax.

2. Free-standing Refrigerators

The mode of attachment of a free-standing refrigerator demonstrates that the appliance remains tangible personal property. The free-standing refrigerators only require a connection to the water line and a power source. The non-invasive nature of the installation indicates that these appliances are meant to be removable at will. Such intent indicates that the free-standing refrigerators remain tangible personal property following installation.

Second, the removal of a free-standing refrigerator is unlikely to cause injury to the real property on which it is installed. Additionally, installation of the free-standing refrigerators is relatively simple and occurs after the real property itself is constructed. The mode of attachment and the fact that installation occurs after the real property is constructed indicate that no serious damage to the underlying real property would occur and that the residence would remain structurally intact following the removal of the appliance.

Third, the removal of a free-standing refrigerator would not destroy its essential character as personal property. A free-standing refrigerator may be removed from the location in which it is installed and moved to a new location without physical damage or alteration of the value of the appliance. This demonstrates that the appliance retains its essential character as personal property upon removal and relocation.

All of these factors support the conclusion that the free-standing refrigerators remain tangible personal property following installation. As a result, the installation of the free-standing refrigerators is subject to the Tennessee sales tax.

3. Free-standing Range/Ovens

The mode of attachment of a free-standing range/oven demonstrates that the appliance remains tangible personal property. The free-standing range/ovens only require a connection to a gas line or power source. The non-invasive nature of the installation indicates that these appliances are meant to be removable at will. Such intent indicates that the free-standing range/ovens remain tangible personal property following installation.

Second, the removal of a free-standing range/oven is unlikely to cause injury to the real property on which it is installed. Additionally, the installation of the free-standing range/oven combination appliances is relatively simple and occurs after the real property itself is constructed. The mode of attachment and the fact that installation occurs after the real property is constructed indicate that no serious damage to the underlying real property would occur and that the residence would remain structurally intact following the removal of the appliance.

Third, the removal of a free-standing range/oven would not destroy its essential character as personal property. A free-standing range/oven may be removed from the location in which it is installed and moved to a new location without physical damage or alteration of the value of the appliance. This demonstrates that the appliance retains its essential character as personal property upon removal and relocation.

All of these factors support the conclusion that the free-standing range/ovens remain tangible personal property following installation. As a result, the installation of the free-standing range/ovens is subject to the Tennessee sales tax.

4. Free-standing Icemakers

The mode of attachment of a free-standing icemaker demonstrates that the appliance remains tangible personal property. The free-standing icemakers require a connection to the water line and a power source. The non-invasive nature of the installation indicates these appliances are meant to be removable at will. Such intent indicates that the free-standing icemakers remain tangible personal property following installation.

Second, the removal of a free-standing icemaker is unlikely to cause injury to the real property on which it is installed. Additionally, installation of the free-standing icemakers is relatively simple and occurs after the real property itself is constructed. The mode of attachment and the fact that installation occurs after the real property is constructed indicate that no serious damage to the underlying real property would occur and that the residence would remain structurally intact following the removal of the appliance.

Third, the removal of a free-standing icemaker would not destroy its essential character as personal property. A free-standing icemaker may be removed from the location in which it is installed and moved to a new location without physical damage or alteration of the value of the appliance. This

demonstrates that the appliance retains its essential character as personalty upon removal and relocation.

All of these factors support the conclusion that the free-standing icemakers remain tangible personal property following installation. As a result, the installation of the free-standing icemakers is subject to the Tennessee sales tax.

APPLIANCES THAT BECOME AFFIXED TO REALTY

As noted above, in determining whether an appliance becomes a part of the realty or remains tangible personal property upon installation, it is important to consider both the expressed intent of the parties³⁵ (a subjective factor) as well as objective factors such as the mode of attachment,³⁶ whether removal would cause injury to the real property on which the appliance is installed,³⁷ and whether removal of the appliance would destroy its essential character as personal property.³⁸ Application of these factors to each of the Taxpayer's appliances listed below leads to the conclusion that all of these appliances become affixed to realty upon installation.

1. Dishwashers

First, the mode of attachment of the dishwashers demonstrates the stated subjective intent of the parties that the dishwashers become affixed to realty following installation. The dishwashers require a connection to a water line, drain line, and power source. They are also bolted to the adjacent cabinetry and/or underside of the countertop. Once installed, dishwashers are unlikely to be removed and relocated. Such intent indicates that dishwashers become affixed to realty following installation.

Second, although the removal of a dishwasher is unlikely to cause serious injury to the real property to which it is installed, dishwashers usually remain in place for the duration of their useful life. And some damage may occur upon removal. This suggests that dishwashers become affixed to realty following installation.

Although, the removal of a dishwasher may not destroy its essential character as personal property, the totality of the circumstances indicates that dishwashers become affixed to realty following installation. As a result, the installation of dishwashers is not subject to the Tennessee sales tax.

³⁵ *Hubbard v. Hardeman Cnty. Bank*, 868 S.W.2d 656, 660 (Tenn. Ct. App. 1993).

³⁶ Tennessee Supreme Court has stated that the mode of attachment is an objective factor that may show the intent of the parties. *General Carpet Contractors*, 511 S.W.2d at 242-243; *Harry J. Whelchel Company*, 610 S.W.2d at 713-714.

³⁷ The courts have generally held that tangible personal property becomes a part of the realty if removing the personal property would seriously damage the real property to which it is affixed. *Magnavox Consumer Elects.*, 707 S.W.2d at 507; *Process Systems, Inc.*, 1996 WL 614526, at *3; *Memphis Housing Authority*, 463 S.W.2d at 679.

³⁸ The Tennessee Court of Appeals has stated that tangible personal property becomes a part of the realty if removal would destroy its "essential character as personalty." See *Process Sys., Inc.*, 1996 WL 614526, at *3; *Green*, 700 S.W.2d at 567.

2. Built-in Refrigerators

First, the mode of attachment of a built-in refrigerator demonstrates the stated subjective intent of the parties that the appliance becomes affixed to realty following installation. The built-in refrigerators are designed to be placed inside cabinetry that is custom-made to accommodate the size of the particular model. The installation requires an electrician to hardwire a connection from the appliance directly into the wiring of the residential structure to provide a power source. Additionally, due to the invasive nature of the installation, the appliance is unlikely to be removed and relocated. Such intent indicates that the built-in refrigerators become affixed to realty following installation.

Second, the removal of the built-in refrigerators is likely to cause serious injury to the real property on which it is installed. This suggests that built-in refrigerators become affixed to realty following installation. Here, installation of the built-in refrigerators requires placement of the appliance in customized cabinetry and hardwiring to a dedicated circuit in the household wiring. Thus, the built-in refrigerators are integrated into the residence and their removal would require significant labor and would very likely cause damage to the cabinetry in which the appliance is installed. These facts are an indication that the built-in refrigerators become affixed to realty following installation.

Although, the removal of the built-in refrigerators may not destroy their essential character as personal property, the totality of the circumstances indicates that the built-in refrigerators become affixed to realty following installation. As a result, the installation of the built-in refrigerators is not subject to the Tennessee sales tax.

3. Built-in Microwaves

First, the mode of attachment of a built-in microwave demonstrates the stated subjective intent of the parties that the appliance becomes affixed to realty following installation. The built-in microwaves are either placed into existing cabinetry or placed inside cabinetry that is custom-made to accommodate the particular appliance model. The microwaves are bolted into place. They may be plugged in or hard-wired. Hard-wired installation requires an electrician to hardwire a connection from the appliance to a dedicated circuit in the residence wiring to provide a power source. Additionally, the built-in microwaves either recycle the air or air from the appliance is removed through a series of vents or ducts that carry the air outside. After installation, these appliances appear flush with the cabinetry to which they are attached. Consequently, they are unlikely to be removed or relocated. All of these factors indicate that the built-in microwaves become affixed to realty following installation.

Second, although the removal of a built-in microwave is unlikely to cause serious injury to the real property to which it is attached, built-in microwaves usually remain in place for the duration of their useful lives. And, some damage may occur upon removal. This suggests that built-in microwaves become affixed to realty following installation.

Although, the removal of a built-in microwave may not destroy its essential character as personal property, the totality of the circumstances indicates that built-in microwaves become affixed to realty following installation. As a result, the installation of built-in microwaves is not subject to the Tennessee sales tax.

4. Built-in Range/Ovens

First, the mode of attachment of built-in range/ovens demonstrates the stated subjective intent of the parties that these appliances become affixed to realty following installation. Unlike freestanding ranges, built-in range/ovens are designed to be placed between cabinets for a seamless look and when installed appear flush with the surface of the surrounding cabinets. Built-in range/ovens come in both hardwired, plug-in, and gas varieties, and installation generally requires the services of an electrician to connect the appliance to the power source.

Second, although the removal of a built-in range/oven is unlikely to cause serious injury to the real property to which it is installed, built-in range/ovens usually remain in place for the duration of their useful life. And some damage may occur upon removal. This suggests that built-in range/ovens become affixed to realty following installation.

Although, the removal of the built-in range/ovens may not destroy their essential character as personal property, the totality of the circumstances indicates that the built-in range/ovens become affixed to realty following installation. As a result, the installation of the built-in refrigerators is not subject to the Tennessee sales tax.

5. Built-in Icemakers

First, the mode of attachment of built-in icemakers demonstrates the stated subjective intent of the parties that these appliances become affixed to realty following installation. Built-in icemakers are generally installed so they are flush with the surface and/or camouflaged with cabinet paneling. They are hard-wired into the household wiring and connected to the water line.

Second, although the removal of a built-in icemaker is unlikely to cause serious injury to the real property to which it is installed, icemakers usually remain in place for the duration of their useful life. And some damage may occur upon removal. This suggests that built-in icemakers become affixed to realty following installation.

Although, the removal of the built-in icemakers may not destroy their essential character as personal property, the totality of the circumstances indicates that the built-in icemakers become affixed to realty following installation. As a result, the installation of the built-in icemakers is not subject to the Tennessee sales tax.

6. Electric or Gas Cooktops

First, the mode of attachment of the electric and gas cooktops indicates that they become affixed to realty following installation. The electric and gas cooktops are installed directly into an opening in the countertop designed specifically for the appliance model and are then connected to a gas or electrical power supply line by an electrician or HVAC technician. Additionally, because the appliances are clamped into a customized opening in the countertop, they are unlikely to be removed and relocated. Such intent indicates that the electric and gas cooktops become affixed to realty following installation.

Second, the removal of the electric and gas cooktops is likely to cause serious injury to the real property in which they are installed. Here, installation of the electric and gas cooktops requires insertion of the appliance directly into the countertop surface. This suggests that the electric and gas cooktops are integrated into the structure of the residence and that their removal would require

significant invasive labor, including possible damage to the countertop surface in which the appliance is installed. These facts are an indication that the electric and gas cooktops become affixed to realty following installation.

Although, the removal of the electric and gas cooktops may not destroy their essential character as personal property, the totality of the circumstances indicates that the electric and gas cooktops become affixed to realty following installation. As a result, the installation of the electric and gas cooktops is not subject to the Tennessee sales tax.

APPROVED: David Gerregano
Commissioner of Revenue

DATE: 11/2/2020