

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**MICHAEL G. DONNELLY** : DETERMINATION  
DTA NO. 828135  
for Revision of a Determination or for Refund of Sales and :  
Use Taxes under Articles 28 and 29 of the Tax Law for the :  
Period 2016. :

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Petitioner, Michael G. Donnelly, filed a petition for revision of a determination or for refund of sales and use taxes under articles 28 and 29 of the Tax Law for the period 2016.

On October 1, 2018, petitioner, appearing pro se, and on October 23, 2018, the Division of Taxation, appearing by Amanda Hiller, Esq. (Nicholas A. Behuniak, Esq., of counsel), waived a hearing and submitted the matter for determination based on documents and briefs to be submitted by February 26, 2019, which date commenced the six-month period for issuance of this determination. After due consideration of the documents and briefs submitted, Donna M. Gardiner, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether petitioner has established that the Division of Taxation's denial of his claim for refund of sales tax paid upon his purchase of a door from a retailer was erroneous.

***FINDINGS OF FACT***

1. On September 2, 2016, petitioner, Michael G. Donnelly, placed an order for a front door. This door was purchased from Erie Materials - Syracuse, 500 Factory Avenue, Syracuse, NY 13208. The invoice listed the price for the door as \$1,475.04, with a delivery charge of

\$20.00, and sales tax in the amount of \$119.60, for a total amount due of \$1,614.64. Petitioner paid this invoice in full on September 2, 2016.

2. On October 15, 2016, petitioner submitted an application for refund or credit of sales or use tax (AU-11) to the Division of Taxation (Division) for \$119.60<sup>1</sup> of sales tax that he paid upon the purchase of the new door. Petitioner argued that since the front door is a capital improvement to his home, the purchase of the door is exempt from sales tax. Although petitioner states that he paid a third-party contractor to install the door, he did not submit an invoice from a contractor or any other evidence to establish this fact.

3. On February 15, 2017, the Division issued to petitioner a refund claim determination notice that denied his refund in full. The Division stated that, in the case of a capital improvement, since petitioner purchased the materials from the supplier and installed the door himself, the tax was properly paid to the supplier when he purchased the door.

4. On March 23, 2017, petitioner timely filed a petition protesting the refund denial letter. Petitioner states that he purchased a new front door for his home and had it installed by a third party contractor. Petitioner states that the new front door is a capital improvement and, as such, should be exempt from tax.

### ***CONCLUSIONS OF LAW***

A. In general, sales tax is imposed on the receipts from every retail sale of tangible personal property (Tax Law § 1105 [a]). Petitioner argues that since the installation of the door qualified as a capital improvement, his purchase of the door should be exempt from sales tax.

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<sup>1</sup>It is noted that the sales tax paid on the invoice included tax paid on both the door and the delivery charge.

B. As pointed out by the Division, the statute does not provide an exemption from sales tax on the purchase of materials used in a capital improvement. Therefore, sales tax was properly imposed by the retailer on its sale of the front door to petitioner.

C. Petitioner states that if a contractor both purchased and installed the door, the door would not be subject to tax. Petitioner argues that he should be afforded the same exemption from paying the sales tax (it is noted that petitioner did not provide any documentation that he paid a contractor to install his door).

The purchases of materials that will classify as a capital improvement are taxable, whether a property owner or a contractor buys them (*see* Tax Law § 1101 [b] [4]). Moreover, the sales tax regulation at 20 NYCRR 527.7 (b) (5) provides that “[a]ny contractor who is making a capital improvement must pay tax on the cost of materials to him, as he is the ultimate consumer of the tangible personal property.” Petitioner, as the ultimate consumer and purchaser of the door, was properly charged sales tax on the purchase of the door. Accordingly, petitioner’s claim for refund was properly denied.

D. The petition of Michael G. Donnelly is denied and the refund claim determination notice, dated February 15, 2017, is sustained.

DATED: Albany, New York  
August 22, 2019

/s/ Donna M. Gardiner  
ADMINISTRATIVE LAW JUDGE