

# ***ST 2406 - SALES TAX : PRODUCTION OF CERAMIC TILE BORDERS***

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TAXATION RULING NO. ST 2406

SALES TAX : PRODUCTION OF CERAMIC TILE BORDERS

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1019784	CUTTING OF CERAMIC TILES MANUFACTURE	SALES TAX ASSESSMENT ACT (NO.1); SECTION 3

OTHER RULINGS ON TOPIC :

PREAMBLE This Ruling considers whether the cutting of large ceramic tiles into smaller tiles of various patterns constitutes manufacture for the purposes of the sales tax law.

2. The term 'manufacture' in subsection 3(1) of Sales Tax Assessment Act (No.1) embraces not only the ordinary understanding of the term but also includes production.

FACTS 3. The work involved in the particular process whereby smaller tiles in various patterns are produced from large tiles is explained below.

4. Various plain coloured unglazed ceramic floor tiles, 100mm square, are cut into a variety of predetermined shapes and sizes using two cutting machines with diamond-edged circular saw blades. The various shapes and sizes of particular colours are then stored separately in small bins. The required number of shapes, sizes and colours of tiles are selected and arranged on a template in various predetermined patterns. A small space is left between each of the tile pieces to accommodate grouting when the complete tile is put in place on a floor. The patterns are described in colour catalogues which enable a potential purchaser to choose a particular pattern or series of patterns.

5. When the pattern has been arranged in the template, a sheet of brown paper is glued over the surface of the tiles. The brown paper sheet enables the pattern to be maintained and facilitates the construction of a particular pattern on the floor space to be covered. These panels are frequently made up from tiles supplied by two or more manufacturers from two or more countries. For instance, it is common to combine French and Italian tiles of different colours to achieve the end result. It is not uncommon for the panel to be made up from tiles from four different sources.

RULING 6. An established and longstanding judicial test of what is manufacture is the often quoted view of Darling J. in McNicol v Pinch (1906) 2 KB 352 at page 361 that 'The essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made'.

7. The statement of Darling J. has led to a view that unless the end product of the processes applied has a different identity to the materials started out with, manufacture is not involved. However, this is too simple an approach. Whether manufacture is involved in a particular situation is dependent upon the relevant facts and an exercise in judgment whether the processes applied result in the production of a different article.

8. On one view it could be argued that the process started out with tiles and, because the end product consisted of tiles, manufacture was not involved. However, the fact that the process in this case involves starting out with tiles and ending up with a tile product is not conclusive of the issue. There have been a number of so called 'same thing' cases under income tax legislation which have been considered by Boards of Review and the courts. Not all have been decided the same way but many have been found to constitute manufacture. For example, Case B56, 70 ATC 267; 16 CTBR(NS) Case 4 1970 p.13 concerned the conversion of dried peas to split peas. It was submitted that the split peas were still peas and were not a commercially distinct product but the Board found that the process of splitting dried peas involved manufacture. The split peas were a different product.

9. In Case B69, 70 ATC 333; 16 CTBR(NS) Case 18 1970 p.104 the company was involved in crushing limestone rock to pellet sizes and to powder. Again, it was submitted that whether in powder, pellet or rock form the product was still limestone. The Board, however, decided that the crushing process involved manufacture. Similarly, in Ready Mixed Concrete (WA) Pty Ltd v FCT 1971 2 ATR 305, 71 ATC 4107 Windeyer J. held that the crushing of rocks into aggregate was manufacture.

10. A further Board case, Case F42, 74 ATC 231; 19 CTBR(NS) Case 60 1974, p.404 decided that the process of converting pasteurized milk to homogenized milk was manufacture.

11. A principle to be drawn from these cases is that manufacture can take place even though the basic identity of the materials may be retained in the end product. It is a question of fact and degree whether the processes applied produce a different product.

12. Tiles come in a range of sizes and designs. There is little doubt that a consumer would regard the sheets of ceramic tiles as being different articles to the original uncut floor tiles. The sheet backed patterned border tiles are a different product to the tiles from which they are produced. While they may still be ceramic tiles they serve a different purpose to the uncut tiles. There is sufficient work and skill involved in converting the tiles to conclude that a different type of product has been produced.

13. Further, the value of the sheets of ceramic tiles is greater than the value of the uncut tiles and, while the fact that value is added to a product from the processes applied is not conclusive of the issue, it is still a factor to be taken into account.

14. The production of patterned tiles as outlined above is

manufacture for sales tax purposes.

COMMISSIONER OF TAXATION

7 April 1988