

M e m o r a n d u m**190.1985**

To: Mr. Jack A. Najarian

May 12, 1976

From: Legal (PRD)

Subject: H--- Industries, Inc.

SR -- XX XXXXXX

The Magic Aisles classification is dependent on the circumstances of their actual installation in a specific building. When the installation of the Magic Aisles are in buildings in which the roller tracks are made a part of the permanent floor of the building, the classification proposed by the audit must certainly be correct.

But, apparently, the Aisles are also installed in their own new additional added flooring which contains the tracking and rests on the completed floor of an existing building. That new Aisle flooring is anchored to the building floor by screws which prevent the Aisle flooring from moving from place. In that case, it is difficult to determine in the abstract whether the Magic Aisle installation is intended to be a permanent installation to the building, and so the floor and tracking would classify as materials and the movable shelving attached to the tracking as fixtures, or whether the Magic Aisles were not permanent additions to the building and properly classified as machinery and equipment which would and should be removed as soon as the building housed a slightly different activity without damage to the building.

That description of the installations in the brochures imply that they are usually installed in specialized buildings such as hospital buildings, bank buildings, and businesses, and government record storage buildings or areas. Further, they are storage record facilities, which may well be necessary and appropriate to the activities to which the building is adapted.

So as a general rule, Magic Aisle installations which are installed on their own flooring added on top of the building flooring, would be flooring and tracking materials and would be shelving fixtures rather than installations of tangible personal property. As always, that presumptive classification might be rebutted by the circumstances of those installations which demonstrate classification as tangible personal property.

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The Sierra steel shelving is of the type which appear readily movable and easily demountable without any damage to the building, and so are best presumptively classified as installations of tangible personal property.

In your response to the district, you should answer the question regarding prospective application of the tax.

PRD:js