

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Taxpayer Guidance Division**

TSB-A-08(26)S  
Sales Tax  
June 9, 2008

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S070320B

On March 20, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from Bell Signs Inc., 1200 Bell Avenue, Panama City, Florida 32401. Petitioner, Bell Signs Inc., provided additional information pertaining to the Petition on May 23, 2007.

The issues raised by Petitioner are:

1. Whether the installation of various types of signage described below constitutes a capital improvement to real property or the installation of tangible personal property that remains tangible personal property after installation.
2. Whether the installation of signs and related sales or purchases of tangible personal property by Petitioner or its affiliate, Bell Signs, LLC, are subject to sales or use tax.
3. Whether sales of related services and tangible personal property are subject to sales tax.
4. Whether Petitioner is required to collect sales tax on sales of signs without installation.
5. Whether Petitioner is required to differentiate between lump-sum contracts and “separated” contracts (i.e., time and materials contracts that separately state the costs for materials and labor consumed in the installation).
6. Whether Petitioner is required to differentiate between new construction and remodeling.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner, a Florida S Corporation, is a sign contractor that manufactures signs and installs them using subcontractors. Petitioner contracts with and pays a subcontractor to install a sign and then bills the customer for the sign and installation costs. Petitioner collects sales tax on the transactions in accordance with the laws of the state where the sign is delivered.

Petitioner manufactures seven distinct categories of signage products as follows:

1) *Monument signs*, which may be constructed of stone, brick, or other masonry, are free-standing signs constructed on the ground with a continuous footing or foundation and a base at grade level.

2) *Pylon signs*, made of aluminum and steel, are installed by being bolted to one or more concrete bases or footings (referred to as piers) and are not attached to a building.

3) *Channel letters* are individually illuminated letters and graphics commonly used in signs for shopping malls and on exterior storefronts. They are installed by being bolted to a wall, usually an exterior wall, and are hardwired to the building's electrical system. There are the following three types of channel letters:

a) *Standard channel letters* are made up of a U-channel base, with colored Plexiglas faces and are usually backlit.

b) *Reverse channel letters* have metal faces and returns (sides of letters) and have a clear plastic backing. These letters are designed to be mounted an inch or two away from the wall. At night, these letters create a halo effect.

c) *Open-face channel letters*. Though not actually open, the faces of these letters are clear plastic with the balance of the letters built just like standard channel letters. This allows for the raw neon to be seen, as well as the inside of the U-channel letterform itself.

4) *Back-lit letters* are individual letters and graphics that are illuminated from a source that is located behind the letters, creating a halo effect around the letters similar to reverse channel letters. They are installed by being bolted to a wall, usually an exterior wall, and are hardwired to the building's electrical system.

5) *Electronic display systems* use digital media to display information and may be bolted, screwed, hung, or otherwise mounted on an interior or exterior wall or in a window.

6) *Banners* are temporary signs used until a permanent sign is manufactured.

7) *Window Graphics* are vinyl signs applied by adhesive inside windows or on doors and are used to provide information such as store hours and emergency contact information.

As part of its sale and installation of signage, Petitioner performs design, engineering, and other services listed below. Petitioner maintains a network of subcontractors who perform installations, repairs, and maintenance for its signs. The various services and related property provided by Petitioner to customers are:

- Engineering Sealed Drawings (i.e., drawings reviewed and sealed by a licensed engineering firm)

- Permits
- Freight
- Crating
- Final Electrical Hookups
- Removals, with sign installation to follow
- Removals, without sign installation
- Repairs
- Electrical components, ballasts, lamps with service work
- Land surveys alone
- Land surveys in conjunction with signs
- Fascia panels
- Trenching, boring, and conduit.

Petitioner is creating a Florida single-member limited liability company, Bell Signs, LLC, that will purchase signs from Petitioner's Florida manufacturing corporation for installation in other states. Bell Signs, LLC, will be disregarded for federal and state income tax purposes and, therefore, treated as a division of Petitioner. However, under Florida state law, Petitioner and Bell Signs, LLC, are distinct legal entities. Bell Signs, LLC, will purchase signs from Petitioner for delivery to Bell Signs, LLC's out-of-state customers. Petitioner will, pursuant to the terms of the sales contracts, deliver the signs either by common carrier or by using Petitioner's own vehicles.

Bell Signs, LLC, will contract with and pay subcontractors to install the signs and will bill the customer for the sign and installation costs. Bell Signs, LLC, will collect sales tax and pay use tax on the transactions in accordance with the law of the state where the signs are delivered and installed. The sales tax and use taxes will be remitted to the taxing authorities in the states where the signs are installed. It is presumed for purposes of this Opinion that Petitioner and Bell Signs, LLC, are or will be registered with New York State for the collection of sales and use tax.

### **Applicable law and regulations**

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

\* \* \*

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article . . . valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the

purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery . . . regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery . . . is provided by such vendor or a third party, but excluding any credit for tangible personal property accepted in part payment and intended for resale. . . .

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. Notwithstanding the preceding provisions of this subparagraph, a sale of any tangible personal property to a contractor, subcontractor or repairman for use or consumption in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, is deemed to be a retail sale regardless of whether the tangible personal property is to be resold as such before it is so used or consumed, except that a sale of a new mobile home to a contractor, subcontractor or repairman who, in such capacity, installs such property is not a retail sale. . . .

Section 1101(b)(9)(i) of the Tax Law defines the term "capital improvement" to mean:

An addition or alteration to real property which:

(A) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and

(B) Becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and

(C) Is intended to become a permanent installation.

Section 1105(a) of the Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 1105(c) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the following services:

\* \* \*

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

\* \* \*

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter; . . .

\* \* \*

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this article, . . .

Section 1110 of the Tax Law provides, in part:

(a) Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state on and after June first, nineteen hundred seventy-one except as otherwise exempted under this article, (A) of any tangible personal property purchased at retail, (B) of any tangible personal property . . . manufactured, processed or assembled by the user, (i) if items of the same kind of tangible personal property are offered for sale by him in the regular course of business or (ii) if items are used as such or incorporated into a structure, building or real property by a contractor, subcontractor or repairman in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property . . . if items of the same kind are not offered for sale as such by such contractor, subcontractor or repairman or other user in the regular course of business, . . .

(b) For purposes of clause (A) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for

such property, or for the use of such property, including any charges for shipping or delivery. . . .

(c) For purposes of subclause (i) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent of the price at which items of the same kind of tangible personal property are offered for sale by the user, and the mere storage, keeping, retention or withdrawal from storage of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him; . . .

(d) For purposes of subclause (ii) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent of the consideration given or contracted to be given for the tangible personal property manufactured, processed or assembled into the tangible personal property the use of which is subject to tax, including any charges for shipping or delivery. . . .

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

\* \* \*

(17) Tangible personal property sold by a contractor, subcontractor or repairman to a person other than an organization described in subdivision (a) of section eleven hundred sixteen, for whom he is adding to, or improving real property, property or land by a capital improvement, or for whom he is about to do any of the foregoing, if such tangible personal property is to become an integral component part of such structure, building or real property; provided, however, that if such sale is made pursuant to a contract irrevocably entered into before September first, nineteen hundred sixty-nine, no exemption shall exist under this paragraph.

Section 1116(a) of the Tax Law provides for exemption from the sales and compensating use taxes with respect to purchases by New York State governmental entities, United States governmental entities, certain nonprofit organizations and other entities who have received New York State sales tax exempt organization status.

Section 1118 of the Tax Law provides, in part:

The following uses of property and services shall not be subject to the compensating use tax imposed under this article:

\* \* \*

(7)(a) In respect to the use of property or services to the extent that a retail sales or use tax was legally due and paid thereon, without any right to a refund or credit thereof, to any other state or jurisdiction within any other state but only when it is shown that such other state or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property or services upon which such a sales tax or compensating use tax was paid to this state. To the extent that the tax imposed by this article is at a higher rate than the rate of tax in the first taxing jurisdiction, this exemption shall be inapplicable and the tax imposed by section eleven hundred ten of this chapter shall apply to the extent of the difference in such rates, except as provided in paragraph (b) of this subdivision.

(b) To the extent that the compensating use tax imposed by this article and a compensating use tax imposed pursuant to article twenty-nine are at a higher aggregate rate than the rate of tax imposed in the first taxing jurisdiction, the exemption provided in paragraph (a) of this subdivision shall be inapplicable and the taxes imposed by this article and pursuant to article twenty-nine shall apply to the extent of the difference between such aggregate rate and the rate paid in the first taxing jurisdiction. In such event, the amount payable shall be allocated between the tax imposed by this article and the tax imposed pursuant to article twenty-nine in proportion to the respective rates of such taxes.

Section 1119(c) of the Tax Law provides, in part:

A refund or credit equal to the amount of sales or compensating use tax imposed by this article and pursuant to the authority of article twenty nine, and paid on the sale or use of tangible personal property, shall be allowed . . . if a contractor, subcontractor or repairman purchases tangible personal property and later makes a retail sale of such tangible personal property, the acquisition of which would not have been a sale at retail to him but for the second to last sentence of subparagraph (i) of paragraph (4) of subdivision (b) of section eleven hundred one. An application for the refund or credit provided for herein must be filed with the commissioner of taxation and finance within the time provided by subdivision (a) of section eleven hundred thirty nine. Such application shall be in such form as the commissioner may prescribe. Where an application for credit has been filed, the applicant may immediately take such credit on the return which is due coincident with or immediately subsequent to the time that he files his application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit. The procedure for granting or denying such applications for refund or credit and review of such determinations shall be as provided in subdivision (e) of section eleven hundred thirty-nine.

Section 525.2(a)(3) of the Sales and Use Tax Regulations provides:

Except as specifically provided otherwise, the sales tax is a “destination tax.” The point of delivery or point at which possession is transferred by the vendor to the purchaser, or the purchaser’s designee, controls both the tax incidence and the tax rate.

Section 527.7(b) of the Sales and Use Tax Regulations provides, in part:

(4) The imposition of tax on services performed on real property depends on the end result of such service. If the end result of the services is the repair or maintenance of real property, such services are taxable. If the end result of the same service is a capital improvement to the real property, such services are not taxable.

Example 9: The replacement of some shingles or patching of a roof is a repair, but a new asphalt shingle roof is a capital improvement.

Example 10: A contractor sells and installs an above-ground swimming pool. The pool consists of a vinyl liner supported by an aluminum and wood frame which rests on the ground and a wood and metal deck. The vinyl liner rests on a bed of sand to prevent damage. The deep end (hopper) of the pool is set approximately two feet into the ground. The pool may be dismantled and moved without substantially damaging the real property. The installation of this pool is not a capital improvement, as it may be dismantled and moved without substantial injury to the land, there is no intent that it become a permanent installation and it has not become affixed so that it has become part of the real property. Therefore, the charges for the sale and installation of the pool are subject to the tax.

(5) Any contractor who is making a capital improvement must pay a tax on the cost of materials to him, as he is the ultimate consumer of the tangible personal property.

Section 541.1(b) of the Sales and Use Tax Regulations provides, in part:

The principal distinguishing feature of a sale to a contractor, as compared to a sale to other vendors who purchase tangible personal property for resale, is that the sale of tangible personal property to a contractor for use or consumption in construction is a retail sale and subject to sales and use tax, regardless of whether tangible personal property is to be resold as such or incorporated into real property as a capital improvement or repair. . . .

Section 541.2 of the Sales and Use Tax Regulations provides, in part:

Definitions. The words, terms and phrases used in this Part have the following definitions except when the context clearly indicates a different meaning:

\* \* \*

(d) A *construction contractor* means any person who engages in erecting, constructing, adding to, altering, improving, repairing, servicing, maintaining, demolishing or excavating any building or other structure, property, development, or other improvement on or to real property, property or land.

\* \* \*

(g) Capital improvement.

\* \* \*

(2)(i) A capital improvement does not include a contract for the sale and installation of tangible personal property which when installed remains tangible personal property.

(ii) A capital improvement does not include the sale of tangible property to a customer under contract if the contractor who sells the tangible personal property is not responsible for the affixation or installation of the tangible personal property furnished.

Section 541.5 of the Sales and Use Tax Regulations provides, in part:

Contracts with customers other than exempt organizations.

\* \* \*

(b) Capital improvements contracts. (1) Purchases. All purchases of tangible personal property (excluding qualifying production machinery and equipment exempt under section 1115(a)(12) of the Tax Law) which are incorporated into and become part of the realty or are used or consumed in performing the contract are subject to tax at the time of purchase by the contractor or any other purchaser. A certificate of capital improvement may not be validly given by any person or accepted by a supplier to exempt the purchase of these materials.

(2) Labor and material charges. All charges by a contractor to the customer for adding to or improving real property by a capital improvement are not subject to tax provided the customer supplies the contractor with a properly completed certificate of capital improvement.

\* \* \*

(4) Documents; capital improvement contracts. (i) When a properly completed certificate of capital improvement has been furnished to the contractor, the burden of

proving the job or transaction is not taxable and the liability for the tax rests solely upon the customer.

(a) The prime contractor should obtain a certificate of capital improvement from the customer and retain it as part of his records. Copies of such certificate must be furnished to all subcontractors on the job and retained as part of their records.

(b) A certificate of capital improvement may not be issued by a contractor, subcontractor or any other person to a supplier on the purchase of tangible personal property.

\* \* \*

(iii) If a contract includes the sale of tangible personal property which remains tangible personal property after installation, the contractor must collect the appropriate New York State and local taxes from the customer on the selling price, including any charge for installation, of the tangible personal property unless a properly completed exemption certificate is issued by the customer. The contractor may apply for a credit or refund of taxes he has paid on purchases of the tangible personal property that remain tangible personal property after installation.

Example 1: A contractor sells a building he has constructed and, as a part of the sale agreement, installs free standing water fountains which remain tangible personal property when installed. The contractor's billing to his customer must separately state all charges for tangible personal property included in the sales agreement. The New York State and applicable local tax rate must be collected on the total charges for the water fountains including any installation charges. In this instance, the contractor may purchase the water fountains tax-free using a contractor exempt purchase certificate. If he pays the tax to his supplier, he is entitled to a refund or credit of the tax paid on the purchase of the water fountains.

## **Opinion**

### **Issue 1**

Petitioner inquires whether installations of its signage constitute capital improvements to real property or are installations of tangible personal property that remain tangible personal property after installation.

Section 1105(c)(3)(iii) of the Tax Law provides an exemption from sales tax for the installation of tangible personal property (including charges for both labor and materials) that, when installed, will constitute a capital improvement.

In order for an installation to constitute a capital improvement, it must meet all three conditions for a capital improvement as described in section 1101(b)(9)(i) of the Tax Law. See *Clestra Hauserman, Inc.*, Adv Op Comm T&F, September 16, 1994, TSB-A-94(43)S.

Thus, charges for installations made for the owner of the real property that (1) substantially add to the value of the real property, or appreciably prolong the useful life of the real property; (2) become part of the real property or are permanently affixed to the real property so that removal would cause material damage to the property or article itself; and (3) are intended to become permanent installations, qualify as capital improvements to the real property.

Petitioner's monument signs described in category 1 are free-standing stone, brick, or masonry signs constructed on the ground with a continuous footing or foundation and a base at grade level. When monument signs are permanently affixed to the real property because they are constructed on a concrete footing and constructed of stone, brick or other masonry, they may satisfy the first condition of the three-part test in section 1101(b)(9)(i) of the Tax Law. With regard to the second statutory requirement, these signs are often sunk in concrete footings and removal would require cutting of the signage and excavating the concrete in which the structures are imbedded. Such installation would satisfy the second condition set forth in section 1101(b)(9)(i) of the Tax Law. However, if a monument sign is merely bolted onto a base rather than imbedded in a concrete foundation, it is unlikely that removal of the sign would cause material damage to the sign or real property. See *Matter of Charles R. Wood Enterprises, Inc. v State Tax Commn.*, 67 AD 2d 1042; *Peek 'n Peak Recreation, Inc.*, Adv Op Comm T&F, July 9, 1987, TSB-A-87(24)S. Installation of the sign in such case would be an installation of tangible personal property that remains tangible personal property after installation.

If a monument sign is installed by the property owner, then generally an intention of permanence is demonstrated satisfying the third condition set forth in section 1101(b)(9)(i) of the Tax Law. However, if a monument sign is installed by a tenant of the property owner and the installation does not become the property of the owner of the premises upon its installation, the tenant reserves the right to remove the installed property or the tenant is obligated to remove the installed property upon the lessor's demand, it is presumed that the installation is not intended to be permanent. See *Empire Vision Center, Inc.*, Dec Tax App Trib, Nov 7, 1991, DTA No.805767. However, such presumption can be overcome by examining the relevant lease terms and the facts and circumstances at the time the sign is installed. See *Empire Vision Center, Inc.*, *supra*.

Even if a monument sign itself is deemed to be a capital improvement to real property, any lettering or other signage attached to the monument sign may be considered separately. For example, a property owner may erect a monument sign and allow a tenant to affix its own lettering to the monument. Assuming such lettering is to be removed at the end of the tenant's lease, that portion of the installation lacks the intention of permanence required to be considered a capital improvement.

Petitioner's pylon signs described in category 2 are installed by being bolted to a concrete base (pier) and are supported by one or more piers. When installed for the owner of the underlying real property, the concrete pier will generally meet the conditions set forth in section 1101(b)(9)(i) of the Tax Law to qualify as a capital improvement to real property. However, items bolted to these piers may be removed without damage to the piers or the item so attached. Therefore, signs installed by bolting to a concrete pier do not have the degree of permanency required to meet the second condition of a capital improvement to real property. See *Matter of Charles R. Wood Enterprises, Inc. v State Tax Commn, supra*; *Peek 'n Peak Recreation, Inc., supra*. Further, if the concrete pier is installed by a tenant, the presumption that such installation is not permanent can only be overcome by examining the relevant lease terms and the facts and circumstances at the time the sign is installed.

Petitioner's signs described in category 3, 4, 5, 6, and 7, whether installed on behalf of the property owner or tenant, do not constitute capital improvements because they fail to satisfy the second condition of the statutory test in section 1101(b)(9)(i) of the Tax Law. These signs are not affixed in such a way that their removal would cause material damage to the sign or to the real property to which they are affixed. The channel letters, backlit letters, and electronic display systems (categories 3, 4, and 5) are affixed by bolts or screws to an exterior or interior wall. Similar to the stools in *Empire Vision Center, Inc.*, Dec Tx App Trib, November 7, 1991, DTA No. 805767, these signs can be removed by unbolting or unscrewing them without destroying the wall or the sign itself. Therefore, these signs fail to meet the second condition of the statutory test. See *Empire Vision Center, Inc., supra*. Notwithstanding that the installation of the sign does not qualify as a capital improvement, the installation of additional electrical circuits to the sign's location may constitute a capital improvement if the installation of such circuits otherwise meets the three conditions set forth in section 1101(b)(9)(i) of the Tax Law. In such case, separate charges for such installation may not be subject to sales tax. See *JetBlue Airways Corporation*, Adv Op Comm T & F, June 21, 2007, TSB-A-07(15)S; and *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, Publication 862 (4/01). The banner signs in category 6 and the window graphics in category 7 are merely mounted temporarily or by using an adhesive. They also do not meet the first condition of the statutory test; i.e., they do not substantially add to the value of the real property or appreciably prolong its useful life. See *Empire Vision Center, Inc., supra*. Accordingly, the sale and installation of Petitioner's signs in categories 3, 4, 5, 6, and 7 do not qualify as capital improvements.

## Issue 2

When Petitioner (as a contractor) or Bell Signs, LLC, installs one of the signs described above that qualifies as a capital improvement, it is not required to collect New York State and local sales or use tax on the installation charges. See sections 1105(c)(3)(iii) and 1115(a)(17) of the Tax Law. This is true whether the sign is manufactured by Petitioner or purchased by Petitioner or Bell Signs, LLC, from a third party. Petitioner or Bell Signs, LLC, should obtain, and keep in its records, a properly completed *Certificate of Capital Improvement* (Form ST-124) from its customer in order to be relieved of the burden of proving that the transaction between

the customer and the contractor is not subject to sales tax. See section 541.5(b)(4) of the Sales and Use Tax Regulations. In order to be properly completed, a *Certificate of Capital Improvement* must contain all the information required on the form including the name, address, and *Certificate of Authority* number (if any) of the prime contractor.

As contractors, Petitioner and Bell Signs, LLC, are liable for sales and use taxes on purchases of signs or materials that are used and installed by them in New York. See section 1101(b)(4) of the Tax Law.

If Petitioner installs a sign that it manufactured in Florida in a capital improvement project in New York, such use is subject to the use tax imposed by section 1110(a)(B) of the Tax Law. See *Bell Signs, Inc.*, Adv Op Comm T & F, April 30, 2008, TSB-A-08(21)S. If the same kind of sign is offered for sale by Petitioner in the regular course of business, the use tax is based on the selling price of such signs. See section 1110(c) of the Tax Law. Otherwise, the use tax is based on the consideration given or contracted to be given by Petitioner for the tangible personal property manufactured, processed, or assembled into the sign. See section 1110(d) of the Tax Law.

If Petitioner sells all of its product to Bell Signs, LLC, and Bell Signs, LLC, performs the installations that result in capital improvements, then Petitioner is not a construction contractor for purposes of New York State and local sales and use tax. Bell Signs, LLC, will be the construction contractor. See section 541.2(d) of the Sales and Use Tax Regulations. Petitioner would be making retail sales of tangible personal property to its customer (Bell Signs, LLC). Since Petitioner proposes to deliver its product to Bell Signs, LLC, in New York, Petitioner is required to collect sales tax from Bell Signs, LLC, on such sales.

Petitioner or Bell Signs, LLC, may be eligible to claim a credit against the New York State and local use tax due on a sign installed as a capital improvement in New York in the amount of any sales or use tax paid without any right to a refund or credit to Florida with respect to such sign. See section 1118(7) of the Tax Law; *Bell Signs Inc., supra*, and *A Guide to New York State Reciprocal Credits for Sales Taxes Paid to Other States*, Publication 39 (8/04).

Installations described above that do not qualify as capital improvements to real property are considered installations of tangible personal property that remain tangible personal property after installation. Petitioner or Bell Signs, LLC, as the case may be, would then be required to collect sales tax on its total charges to customers for such installations, as well as repairs, maintenance, or service to real property that does not result in a capital improvement. See sections 1105(a) and 1105(c) of the Tax Law. However, installations for organizations or governmental entities exempt from sales tax under section 1116(a) of the Tax Law are not subject to tax. Petitioner or Bell Signs, LLC, may claim a refund or credit for any New York State and local sales or use tax it paid on its purchase of materials incorporated into such installations against its remittance of the tax collected from its customer. See section 1119(c) of the Tax Law and section 541.5(b)(4)(iii), Example 1 of the Sales and Use Tax Regulations.

Alternatively, Petitioner or Bell Signs, LLC, may issue a *Contractor Exempt Purchase Certificate* (Form ST-120.1) to its supplier for purchases of materials that will be incorporated into installations of tangible personal property that will remain tangible personal property after installation in lieu of paying the sales tax at time of purchase. Since under these circumstances neither Petitioner nor Bell Signs, LLC, has any liability for New York State and local use tax on its purchase of materials that when installed retain their identity as tangible personal property, the credit for sales or use tax paid to another state under section 1118(7) of the Tax Law does not apply. Neither Petitioner nor Bell Signs, LLC, may offset the sales or use tax it paid to another state against the amount of its customer's liability for New York sales tax (which tax liability Petitioner or Bell Signs, LLC, must collect from the customer and remit to New York State) on the customer's purchases of signs that do not become capital improvements.

### **Issue 3**

Petitioner further inquires as to the taxability of various services and miscellaneous items sold in conjunction with its signs. Charges, whether or not separately stated, for engineering sealed drawings, freight and delivery, crating, final electrical hookups, removals with sign installation to follow, land surveys in conjunction with signs, trenching and boring (including conduit), other materials (e.g., fascia panels, electrical components, ballasts, and lamps), and permits required to be obtained by a contractor are considered expenses incurred by Petitioner in making its sale and installation of the signage. See section 1101(b)(3) of the Tax Law. If such installation constitutes a capital improvement to real property, the entire charge is not subject to sales tax. If, however, the installation does not qualify as a capital improvement to real property, the total charge to the customer including Petitioner's costs for the various services and miscellaneous items is subject to sales tax under sections 1105(a) and 1105(c)(3) of the Tax Law. Separately stated reimbursements to Petitioner for payment of charges for filing fees for building or other permits, which are required to be obtained by the property owner or tenant from a government entity, are not subject to sales tax. See *Elevator Service Companies, George Murray & Associates, Inc.*, Adv Op Comm T & F, April 15, 2005, TSB-A-05(11)S.

Petitioner also performs some services not in conjunction with its installations. Sign removals and repairs are subject to sales tax under sections 1105(c)(3) and 1105(c)(5) of the Tax Law. If Petitioner charges its customer for a land survey by a licensed professional that does not result in the installation of a sign or signage, such charge is not subject to sales tax. See *Lockwood Support Services, Inc.*, Adv Op Comm T & F, July 29, 1988, TSB-A-87(26.1)S.

### **Issue 4**

Petitioner also makes occasional sales of signs without installation. Such sales are retail sales of tangible personal property subject to sales tax under section 1105(a) of the Tax Law at the rate in effect where the sign is delivered by Petitioner to its customer or the customer's designee. See section 525.2(a)(3) of the Sales and Use Tax Regulations.

**Issue 5**

With respect to installations performed upon real property, the provisions of Articles 28 and 29 of the Tax Law make no distinction between lump-sum and time-and-materials contracts.

**Issue 6**

For purposes of New York State sales and use tax, it is immaterial whether the sign installations are done in conjunction with new construction or remodeling of the real property. Petitioner's liability to pay New York State sales or use tax or its obligation to collect New York State sales tax from its customer is determined in accordance with the discussion of Issues 1, 2, and 3.

DATED: June 9, 2008

/s/  
Jonathan Pessen  
Tax Regulations Specialist IV  
Taxpayer Guidance Division

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.