

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether receipts from the sales and installation of its custom window inserts constitute a capital improvement for sales tax purposes.

We conclude that the installation of Petitioner's window inserts do not qualify as a capital improvement, but rather constitute installation of tangible personal property. Therefore, Petitioner's receipts from the sale and installation of the custom window inserts are subject to State and local sales and use tax.

**Facts**

Petitioner sells and installs custom window inserts it describes as "interior storm windows." Petitioner's window inserts are designed primarily to improve energy efficiency and noise control. The inserts are measured specifically for a particular window and are not useful for other window openings. Screws are used to attach brackets on each side of an existing window frame which, once installed, are used to hold a safety chain that prevents accidental removal of the insert. Otherwise, there are no additional nails, adhesives, or screws involved in the installation and no construction is required to the window frame itself. Petitioner's window inserts are easily installed on the interior portion of an existing or original window and are held in place by a patented compression tubing that expands into the space between the custom cut acrylic panel and the existing window frame. According to Petitioner, its window inserts can be easily removed. Petitioner also states that the window inserts are intended to be permanent and are covered by a lifetime warranty.

**Analysis**

Sales tax is imposed on "[t]he receipts from every retail sale of tangible personal property," and on the service of "[i]nstalling tangible personal property ... except for installing property which, when installed, will constitute (a) ... capital improvement to real property .... " See Tax Law §§ 1105(a) and (c)(3). Capital improvement is defined as "(i) 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."

Petitioner's installation of window inserts is not a capital improvement. Although Petitioner asserts that its custom window inserts substantially add to the value of real property by increasing the property's energy efficiency and noise control and are intended to be permanent due to the custom nature of the inserts, we need not opine about whether the inserts satisfy the first and third prongs of the capital improvement test. Petitioner's window inserts do not satisfy the second prong of that test because they are not permanently affixed in such a way that removal would cause material damage to the inserts themselves or to the real property. See Publication 862-- *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property* Accordingly Petitioner's receipts from the sale and installation of its custom window inserts are subject to State and local sales and use taxes.

DATED: August 1, 2024

/s/  
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MARY ELLEN LADOUCEUR  
Principal Attorney

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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.