

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 if the installation of its gutter protection system onto a house with existing gutters qualifies as a capital improvement.

We conclude that this installation is a capital improvement and is not subject to sales tax.

Facts

Petitioner installs gutter protection systems for customers in New York State. The gutter protection system is intended to be a permanent installation with a lifetime warranty. The gutter protection system is meant to prolong the useful life of the home by preventing water damage. Specifically, the unique gutter protection system is designed to keep debris (such as leaves, pine needles, dirt, shingle grit, acorns, nests, etc.) from clogging the homes' gutters, thereby preventing water from collecting and causing water damage to the home. The gutter protection system neither replaces nor is a repair to the existing gutter system, but rather a separate system designed to eliminate the cleaning of the gutters themselves.

The gutter protection system is comprised of specifically designed screens and covers and is intended to supplement the existing or new gutters. The installation requires over 20 different tools, hundreds of galvanized fascia, zip screws, structural hangers, silicone caulk, end caps, etc. Removal of the various screws and hangers used to secure the gutter protection system will cause damage to both the gutter and the gutter protection system. Once removed, the gutter protection system cannot be used again as it is uniquely manufactured for a particular gutter. The installation is considered permanent and is attached directly to the real property.

Analysis

Capital improvements to real property are excluded from the imposition of sales tax. Tax Law §§ 1101(b)(9)(i) and 1105(c)(3)(iii). A capital improvement is an addition or alteration to real property that: (1) substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; (2) becomes part of the real property or is permanently affixed to the real property so the removal would cause material damage to the property or article itself; and (3) is intended to become a permanent installation. Tax Law §1101(b)(9)(i). The imposition of tax on services performed on real property depends on the end result of the services. If the end result of the services is the repair or maintenance of real property, the services are taxable. If the end result of the services is a capital improvement to the real property, the services are not taxable. *See* 20 NYCRR §527.7(b)(4).

The gutter protection system is meant to prolong the useful life of the home by preventing water damage. The gutter protection system becomes part of the real property in that it is attached

directly to, and becomes a part of, the existing gutters, which are already attached to the real property. Removal of the gutter protection system would cause damage to both the existing gutter and the gutter protection system. Finally, the gutter protection system is intended to be a permanent installation with a lifetime warranty. The gutter protection system meets all the requirements for a capital improvement. Therefore, its installation is exempt from sales tax.

DATED: August 20, 2024

/s/

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.