

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-81(10)S
Sales Tax
August 13, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810112A

On January 12, 1981 a Petition for Advisory Opinion was received from Morse Chain Division, Borg-Warner Corporation, 620 South Aurora Street, Ithaca, New York 14850.

The issue raised is whether the installation of certain liquid propane gas tanks constitutes a capital improvement to real property for purposes of the State sales tax imposed under Article 28 of the Tax Law.

Petitioner has had 30,000 gallon liquid propane storage tanks installed on its property. The tanks were installed in accordance with standard safety practices, as well as national codes. That is, the tanks are of a free standing nature, sitting upon concrete saddles on top of cork which has been thoroughly coated with grease to allow the tanks to expand and contract in accordance with the varying outside temperatures to which they are subjected. If the tanks were rigidly fastened to their supports it would not be possible for them freely to expand and contract, possibly resulting in a rupture of the tanks with a consequent fire or explosion. The tanks have a permanent attachment to a distribution system.

The Sales and Use Tax Regulations define the term "capital improvement" as an addition or alteration to real property "(i) which substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property, and (ii) which 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 (iii) is intended to become a permanent installation." 20 NYCRR 527.7(a)(3).

The installation in question satisfies the criteria set forth in the provision of the Sales and Use Tax Regulations quoted above. Accordingly, the installation in question constitutes a capital improvement to real property for purposes of the sales tax imposed under Article 28 of the Tax Law and qualifies for the exemptions from such tax provided with respect to capital improvements to real property.

DATED: July 28, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau