

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

TSB-A-87(15)S
Sales Tax
March 27, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S861219A

On December 19, 1986, a Petition for Advisory Opinion was received from Thompson's Mobile Manor, Clinton Street, New York Mills, New York 13417.

The issue raised is whether the charge for installation of water pipe constitutes a capital improvement to real property within the meaning of section 1101(b)(9) of the Tax Law and is, therefore, exempt from sales tax.

Petitioner, partner in a trailer park operation, entered into a contract with a contractor for the installation of water pipe from the end of the existing main water line to and throughout Petitioner's trailer park. The water pipe is installed in ground along a city street, thereby furnishing the trailer park and its occupants with water. The water pipe installed from the existing main water line to the Petitioner's trailer park becomes the property of the town when installed.

The contractor charged sales tax on both the cost of the water pipe, which the contractor purchased, and the charge for its installation.

Petitioner submitted a signed certificate of capital improvement to the contractor.

Section 1105(c)(3) of the Tax Law imposes a tax on the receipts from the following service:

Installing tangible personal property, . . . or maintaining, servicing or repairing tangible personal property . . . except . . . 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. . . .

Section 1101(b)(9) of the Tax Law defines capital improvement, in relevant part, as follows:

- (9) Capital improvement. An addition or alteration to real property which:
- (i) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and
 - (ii) 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. . . .

Section 1105(a) of the Tax Law imposes tax on:

"The receipts from every retail sale of tangible personal property, except as otherwise provided in this Article"

Section 1115(a) of the Tax Law states:

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, . . . if such tangible personal property is to become an integral component part of such structure, building or real property. . . .

Section 541.5(b)(2) of the Sales and Use Tax Regulations provides:

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. 20 NYCRR 541.5(b)(2).

The installation of in ground water pipe clearly meets each of the conditions set forth in section 1101(b)(9) of the Tax Law. See: Publication 862 Classifications of Improvements and Repairs to Real Property for Sales Tax Purposes. Consequently, such installation constitutes a capital improvement to real property rather than a repair. By virtue of this classification Petitioner is exempted from paying sales tax on the installation charge. Tax Law 1115(a)(17).

Additionally, Petitioner is not liable for sales tax on the price charged by the contractor for the water pipe used in this capital improvement. Sales tax on the cost of these materials should have been paid by the contractor at the time of purchase. The contractor cannot now collect sales tax from the Petitioner on the cost of the material since Petitioner presented a completed Certificate of Capital Improvement to the contractor pursuant to sales and use tax regulation section 541.5(b)(2).

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Accordingly, the installation of in ground water pipe satisfies the requirements of section 1101(b)(9) of the Tax Law and is therefore, a capital improvement. As a result, the contract price paid by the Petitioner is not subject to sales tax.

DATED: March 27, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.