

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

TSB-A-89 (47)S  
Sales Tax  
December 8, 1989

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890808B

On August 8, 1989 a Petition for Advisory Opinion was received from ANC Heating and Air Conditioning, Inc., 104 N. Duane Ave., Endicott, N.Y. 13760.

The issues raised by Petitioner, ANC Heating and Air Conditioning, Inc., are whether the replacement of air conditioning condensing units required because of an upgrading or a mechanical breakdown are capital improvements and whether the replacement or repair of thru-the-wall air conditioners or package terminal air conditioners are capital improvements.

Section 1101(b)(9) of the Tax Law and Section 527.7 of 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.

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

Section 1105(c)(3) of the Tax Law imposes a tax on receipts from the service of "Installing tangible personal property . . . except for installing property which, then installed, will constitute (a). . . capital improvement to real property. . ."

The installation of in-window or through-the-wall air conditioners other than the original replacement of through-the-wall mounted units, do not constitute capital improvements within the meaning of Section 1105(c)(3) of the Tax Law. Likewise the replacement or repair of any parts of such air conditioners do not constitute capital improvements. See New York State Department of Taxation and Finance, New York State and Local Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property, Publication 862 (7/87), at 4, 5.

Outside condensing units of central air conditioning systems and package terminal air conditioners, which are a type of central air conditioning system, that are permanently wired to the electrical system and fastened to the wall or floor in such a way that their removal would cause material damage to either the air conditioner or the real property are considered to be capital improvements.

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However, the repair or replacement of compressors, condenser coils, condenser fans, controls and relays in such units constitute the repair, maintenance or installation of tangible personal property and thus are subject to the sales tax imposed pursuant to Section 1105(c)(3) of the Tax Law. (See Publication 862 (7/87) supra.).

DATED: December 8, 1989

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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