

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

TSB-A-90(45)S
Sales Tax
August 20, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900417E

On April 17, 1990 a Petition for Advisory Opinion was received from Sharon P. Sheinfeld, c/o Richard A. Eisner & Company, 575 Madison Avenue, New York, New York 10022.

The issue raised by Petitioner, Sharon P. Sheinfeld, is what sales tax exemption documents should a painting contractor obtain when he is acting as a subcontractor for a prime contractor or directly for an owner or tenant.

Petitioners' client is a painting contractor who performs both capital improvements and repairs. The work is performed directly for tenants and owners as well as subcontractors for general building contractors.

Section 541.5(b)(4) of the Sales and Use Tax Regulations provide that:

Documents; capital improvement contracts. (i) When a properly completed certificate of capital improvement has been furnished to the contractor, the burden of proving the job or transaction is not taxable and the liability for the tax rests solely upon the customer.

(a) The prime contractor should obtain a certificate of capital improvement from the customer and retain it as part of his records. Copies of such certificate must be furnished to all subcontractors on the job and retained as part of their records.

(b) A certificate of capital improvement may not be issued by a contractor, subcontractor or any other person to a supplier on the purchase of tangible personal property.

(ii) Where a contractor does not receive a capital improvement certificate from a customer, the contract or other records of the transaction will prevail. In such case:

(a) where the contractor does not receive a capital improvement certificate, collects tax on the full invoice price and the job is a capital improvement to real property, the contractor is liable for the tax on the cost of materials incorporated into the job, plus the tax collected from the customer. The customer is entitled to a refund of the tax paid to the contractor; or

(b) where the contractor does not receive a capital improvement certificate, collects no tax on the charges billed to the customer and the job is a capital improvement to real property, the contractor is liable for the tax on the cost of materials incorporated into the job performed.

(iii) If a contract includes the sale of tangible personal property which remains tangible personal property after installation, the contractor must collect the appropriate New York State and local taxes from the customer on the selling price, including any charge for installation, of the tangible personal property unless a properly completed exemption certificate is issued by the customer. The contractor may apply for a credit or refund of taxes he has paid on purchases of the tangible personal property that remain tangible personal property after installation.

Accordingly, if Petitioner's client is performing a capital improvement contract for a subcontractor, prime contractor, tenant or owner he should obtain a copy of the Certificate of Capital Improvement (Form ST-124) which was issued to his prime contractor or an original Certificate of Capital Improvement from the owner or tenant. If Petitioner's client is performing a repair or maintenance contract for a subcontractor or a prime contractor, he should obtain a Contractor Exempt Purchase Certificate (Form ST-120.1) from his subcontractor or prime contractor. It should be noted that if Petitioner's client is working for an exempt organization described in Section 1116(a) of the Tax Law, he must obtain a copy of the organization's exempt organization certification or a governmental purchase order.

DATED: August 20, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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