

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

TSB-A-94 (5)S
Sales Tax
March 7, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S931130A

On November 30, 1993 a Petition for Advisory Opinion was received from Home Cable Concepts, Inc., 6266 Centre Park Drive, West Chester, OH 45069.

The issue raised by Petitioner, Home Cable Concepts, Inc., is whether the sales and installation of direct broadcast receiving systems sold and permanently installed by Petitioner fall within the meaning of capital improvement as defined under Section 1101(b)(9) of the Tax Law.

Petitioner sells and installs direct broadcast receiving systems to residential customers. The microwave antennas are welded or attached by other means to a pole sunk in a concrete base which is set into the ground. Wires are run through the support and then under ground from the microwave antenna to the house and through the walls of the house to the television receiver. Electrical wires are run under ground from the service box through the support pole to the antenna.

Section 1101 of the Tax Law states, in part:

Definitions. - -

(b) When used in this article for purposes of the taxes imposed by subdivisions ...
(c) . . . of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (3). . . (5). . . of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. . . .

(9) Capital improvement. (i) An addition or alteration to real property which:

(A) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and

(B) 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

(C) Is intended to become a permanent installation.

Section 1105 of the Tax Law states, in part:

. . . there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property . . .

(c) The receipts from every sale, except for resale, of the following services:

(3) Installing tangible personal property, or maintaining, servicing or repairing tangible personal property except:

(iii) for installing property which, . . . when installed, will constitute an addition or capital improvement to real property, property or land . . . as . . . defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter. . . .

(5) Maintaining, servicing or repairing real property, property or land, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement

Section 1115 of the Tax Law states, in part:

Exemptions from sales and use taxes.-- (a) 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, or for whom he is about to do any of the foregoing, if such tangible personal property is to become an integral component part of such structure, building or real property;

The construction of concrete foundations, including poles permanently installed therein, has been determined a capital improvement to real property. (See Department of Taxation and Finance Publication 862 [1/90], Classification of Improvements and Repairs to Real Property for Sales Tax Purposes, pg. 6; Matter of Slattery Associates, Inc., Dec St Tx Comm, Aug. 16, 1977; STH 77-65; 20 NYCRR 528.12[c] [3]).

In Multi-View Communication, Inc., Adv Op St Tx Comm, March 26, 1986, TSB-A-86(12)S it was held that a satellite dish is considered equipment which retains its identity as tangible personal property after installation, and thus its purchase and the cost of its installation are subject to the imposition of sales tax pursuant to Sections 1105(a) and 1105(c)(3) of the Tax Law.

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Accordingly, Petitioner's receipts from charges to customers for the installation of the concrete base, the installation of the signal wire from the antenna, underground to the house and through the walls of the house to the television receiver and the installation of electrical wire from the service box underground to the antenna will not be subject to the tax imposed under Section 1105 of the Tax Law since such installations are considered to be capital improvements as defined under Section 1101(b)(9) of the Tax Law. It is noted, however, that the Petitioner is required to pay sales tax on the purchase of materials used in connection with the installation.

However, the microwave antenna, like the satellite dish discussed in Multi-View Communication, Inc. supra, is considered to be equipment which retains its identity as tangible personal property after installation, whether it is welded or otherwise affixed to the pole. Since its removal, under either circumstance, would not cause material injury to the property or the item itself, it cannot be held that the microwave antenna becomes a permanent part of the real property. Accordingly, as its installation fails to meet the second condition set forth in Section 1101(b)(9) of the Tax Law, it does not constitute the performance of a capital improvement. Petitioner's charges to its customers, both for sale of the microwave antenna and for its installation will be subject to the tax imposed under Section 1105(a) and 1105(c)(3) of the Tax Law.

It is noted that whenever Petitioner renders to its customer an invoice which includes charges both for the sale of tangible personal property and for the performance of a capital improvement, the taxable and nontaxable amounts must be stated separately thereon. If such amounts are not separately stated, the entire amount charged will be subject to State and local sales tax. (20 NYCRR 533.2(a)(1);(b)(2)).

DATED: March 7, 1994

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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