

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-07(9)S  
Sales Tax  
March 26, 2007

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S040830A

On August 30, 2004, the Department of Taxation and Finance received a Petition for Advisory Opinion from SI Technologies, Inc., 11 Walker Way, Albany, New York 12205. Petitioner, SI Technologies, Inc., provided additional information pertaining to the Petition on October 28, 2004.

The issue raised by Petitioner is whether the installation of an access control security system constitutes a capital improvement to real property for purposes of New York's sales and compensating use tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

An access control security system allows people and vehicles to enter and exit a facility through a door, entryway, parking gate, turnstile, etc., and monitors such entry and exit. The system consists of a credential reader, a control panel, connecting wiring, alarm sensors attached to windows and other access points, a desktop computer, and prewritten computer software. The system's credential readers can be either swipe card readers, biometric readers, or numeric pin pads. These units (except for the computer and computer software) are attached to a building or access point either by screws or bolts or by being recessed into a wall and are hard wired to the electrical system of the facility where installed. The credential reader is hard wired to the control panel. Petitioner may also install a closed-circuit television system as part of the access control security system if required by the customer.

The control panel is attached to a wall, usually in a utility closet, and is connected to a stand-alone desktop computer. This computer may be provided by Petitioner or the customer, depending upon the customer's preference. Petitioner provides and installs the prewritten software on the computer used to operate the system to control access in and out of the facility and to detect violations signaled by the alarm sensors attached to access points. The prewritten software may also be used to control the closed-circuit television system if one is installed. These systems are monitored by the customer's security staff and are generally not connected to an off-site central monitoring station. Petitioner provides the software as part of the total installation package. Petitioner does not sell the software separately and the software is not functional without being installed on a computer used to operate the access control security system.

**Applicable law and regulations**

Section 1101(b) of the Tax Law provides, in part:

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

\* \* \*

(6) Tangible personal property. Corporeal personal property of any nature. However, except for purposes of the tax imposed by subdivision (b) of section eleven hundred five, such term shall not include gas, electricity, refrigeration and steam. Such term shall also include pre-written computer software, whether sold as part of a package, as a separate component, or otherwise, and regardless of the medium by means of which such software is conveyed to a purchaser. . . .

\* \* \*

(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.

\* \* \*

(14) Pre-written computer software. Computer software (including pre-written upgrades thereof) which is not software designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more pre-written computer software programs or pre-written portions thereof does not cause the combination to be other than pre-written computer software. Pre-written software also includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such person is not the author or creator, such person shall be deemed to be the author or creator only of such person's modifications or enhancements. Pre-written software or a pre-written portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains pre-written software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the

purchaser for such modification or enhancement, such modification or enhancement shall not constitute pre-written computer software.

## **Opinion**

Petitioner asks whether charges for the installation of its access control security system constitute charges for a capital improvement to real property.

The system consists of a credential reader, a control panel, connecting wiring, alarm sensors attached to windows and other access points, a desktop computer, and prewritten computer software. These units (except the computer and computer software) are attached to the building or access point (door, window, gate, etc.) either by screws or bolts or by being recessed into walls and are hard wired to the electrical system of the facility where installed.

When Petitioner installs an access control security system that meets all three of the conditions set forth in section 1101(b)(9)(i) of the Tax Law, the installation is considered to be a capital improvement. Thus, an installation that 1) substantially adds to the value or prolongs the useful life of the real property, 2) 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 the article itself, and 3) is intended to be permanent constitutes a capital improvement.

The first condition for a capital improvement set forth in section 1101(b)(9)(i)(A) of the Tax Law requires that an installation must “substantially add to the value of the real property, or appreciably prolong the useful life of the real property.” An access control security system cannot be said to appreciably prolong the useful life of the real property, but it is reasonable to conclude that it may substantially add to the value of the real property. In order to substantially add to the value of the real property, the access control security system must remain fully functional after installation whether or not the system is connected to an off-site central monitoring station. When a property owner has an access control security system installed that does not require connection to a central monitoring station to be fully functional, the system may substantially add to the value of the real property; therefore, the installation of the system would meet the first requirement under section 1101(b)(9)(i) of the Tax Law to qualify as a capital improvement to real property.

The second condition for a capital improvement set forth in section 1101(b)(9)(i)(B) of the Tax Law requires that the access control security system be installed in such a manner as to become part of the real property or be permanently affixed to the real property so that removal would cause material damage to the property or system itself. Installations of circuit breaker panels, in-wall wiring, additional circuits to electrical systems, main power boxes, and light fixtures are considered to qualify as capital improvements. See *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, Publication 862 (4/01). The swipe card readers, biometric readers, or numeric pin pads (collectively, credential readers); alarm sensors attached to access points; and the control panel, when wired and installed in a

similar manner as the building's electrical system, circuit breaker panels, and other items listed above are considered to be permanently affixed to the real property unless a contrary intention is shown. When such credential readers, alarm sensors, and control panels are installed so that they become a part of the real property, their installation would meet the second requirement under section 1101(b)(9)(i) of the Tax Law to qualify as a capital improvement to real property.

The third condition for a capital improvement set forth in section 1101(b)(9)(i)(C) of the Tax Law is that the access control security system must be intended to become a permanent installation. In order to meet this condition, the system vendor or installer cannot retain any rights of ownership or rights of removal of the installed property and the access control security system must become the property of the real property owner upon its installation. When a person other than the owner of the real property upon which the system is installed retains ownership of the system or its components or retains a right to remove the system or its components from the property owner's premises, it has been held that the installation lacks the intention of permanence required to satisfy the third condition under section 1101(b)(9)(i) of the Tax Law and such installation does not qualify as a capital improvement to real property. See *Matter of ADT Co. v State Tax Commission*, 113 AD2d 140, 142; *Merit Oil of New York, Inc. v State Tax Commission*, 124 AD2d 326, 328; *Supermarket General Corp. Pathmark Stores*, Tax App Trib, November 9, 2006, DTA No. 819768. If the installation is made for a tenant of the real property, the installation may qualify as a capital improvement if the lease provides that title to improvements is to vest in the landlord upon installation and that the improvements are to become a part of the premises and remain on the premises. See *Beaman Corporation*, Adv Op St Tx Comm, August 19, 1982, TSB-A-82(32)S. Accordingly, when an access control security system becomes the property of the real property owner and is sold without the vendor retaining any rights of ownership or rights of removal of the system or any of its components, the installation will meet the third requirement under section 1101(b)(9)(i) of the Tax Law to qualify as a capital improvement to real property.

The control panel is attached to the wall, usually in a utility closet, and a stand-alone desktop computer is connected to the control panel. The customer may purchase this computer from Petitioner or may provide its own computer, depending upon the customer's preference. Presumably, the computer is merely plugged into the control panel and is not affixed to the real property so that removal would cause damage to it or the real property. A separate price can be determined for the computer since the customer has the option of providing its own computer or purchasing one from Petitioner. The computer is a separate component of the system, and its installation does not meet the conditions set forth in section 1101(b)(9)(i) of the Tax Law to qualify as a capital improvement to real property. The installation of the computer is, therefore, an installation of tangible personal property that remains tangible personal property after installation.

Petitioner, as part of its installation of an access control security system, provides the customer with prewritten software that coordinates and works with the system. Prewritten software is tangible personal property for sales tax purposes. See section 1101(b)(6) of the Tax

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Law. The software is provided to customers for installation on the computer that is connected to the system whether the computer is provided by Petitioner or the customer. Since the computer is not a capital improvement when installed but remains tangible personal property, the software appears to be tangible personal property that is not a capital improvement to the real property.

DATED: March 26, 2007

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