

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether its purchase of floating cement docks is a capital improvement and not subject to sales and use tax (sales tax). We conclude that Petitioner's purchase of floating cement docks is not a capital improvement and is subject to sales tax.

**Facts**

Petitioner is a full-service marina located on an inland basin. Petitioner offers boat slip rentals, launching and hauling services, parts and repairs, fuel and pump-out service, and sales of new and used boats. Since inception, Petitioner has owned and maintained fixed wooden docks attached to wooden pilings embedded in the basin floor. Petitioner owns the basin floor (land) beneath its docks. Petitioner is in the process of replacing the existing wooden docks with new floating cement docks. In the specific circumstance Petitioner asks about here, Petitioner replaced one entire dock containing about 68 boat slips. The existing wooden dock was completely removed and replaced with a new floating cement dock.

The new floating cement dock was created by attaching cement docks to each other and to the main walk assembly. The cement docks weigh from 60,800 pounds to 185,300 pounds and the main walk assembly, including the dock ramp, weighs 326,100 pounds. In total, the new floating cement dock weighs 633,200 pounds. The cement docks are held together with wooden walers that work to distribute weight over the dock — to increase weightbearing capacity, prevent breakage, and provide a buffer against damage from boats. The cement docks are further attached to pilings made of one-half inch steel pipe that is twelve inches in diameter. These pilings are affixed by being driven deep into the basin floor. The pilings rise ten feet above the floating cement docks, permitting the docks to move vertically up and down as the tides change. Each dock has infrastructure to provide users with electric and water. There are conduit boxes built internally into the polystyrene core that connect electric boxes on shore to power pedestals in front of each boat slip, providing hard-wired electric and water service to each individual slip. The main walk assembly also has a lockable security gate to provide security for the boat slips. The cost of the new floating cement dock was \$694,000.00 including sales tax.

Petitioner maintains that the new floating cement dock is a significant investment that substantially increases the value of its real property and prolongs the useful life of its basin and associated business. Petitioner states that the tax assessor considers the entire basin, including the docks, when valuing Petitioner's realty. Further, Petitioner intends that

the new floating cement dock will be a permanent fixture. Petitioner states that removing the cement docks would require either that the docks be disassembled and lifted over the pilings or the pilings be removed and the docks disassembled, floated to a haul out slip, and lifted out by a crane. For these reasons, and because the basin is located inland such that the floating cement dock is protected from damage caused by ice and waves, Petitioner has no intention of removing the dock — in the winter, or otherwise.

Petitioner purchased the floating cement dock from a third-party marine construction supply company (Supplier). The floating cement dock was shipped by Supplier to Petitioner in New York and installed by Petitioner’s own employees. Supplier charged Petitioner, and Petitioner paid, New York State and local sales taxes on its purchase of the floating cement dock.

Petitioner now asks whether its purchase of the floating cement dock was a nontaxable capital improvement.

### **Analysis**

Tax Law § 1105 imposes sales tax on the retail sale of tangible personal property (see Tax Law § 1105[a]) and on specific services, including the service of installing tangible personal property (see Tax Law § 1105[c][3]). However, the service of installing tangible property that when installed is a capital improvement to real property is not subject to sales tax. See Tax Law § 1105(c)(3)(iii); see *also* Tax Law §1101(b)(9), defining “capital improvement.”

Under the facts presented, Petitioner purchased the floating cement dock from Supplier on an uninstalled basis and then installed it using its own employees. Thus, Petitioner purchased only tangible personal property from Supplier — not an installation service that resulted in a capital improvement, or otherwise, to real property. Petitioner correctly paid sales tax on its purchase of these floating cement docks.

DATED: August 14, 2024

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/s/  
MARY ELLEN LADOUCEUR  
Principal Attorney

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.