TSB-A-83(14)S
Sales Tax
March 24, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION PETITION NO. S830110A

On January 10, 1983 a Petition for Advisory Opinion was received from Improv, Inc., 358 West 44th Street, New York, N.Y. 10036.

The issue raised is whether Petitioner's installation of a fire sprinkler system constitutes a capital improvement for purposes of the sales and use taxes imposed under Article 28, and pursuant to Article 29, of the Tax Law. It is concluded herein that it does constitute such a capital improvement, and that the cost thereof is accordingly not subject to tax.

Petitioner, a tenant, hired a contractor to furnish and install a fire sprinkler system in the leased premises occupied by Petitioner's business. The system was installed in the ceilings and connected to the water supply system. The lease entered into between the Petitioner and the landlord provides as follows: "All improvements made by the tenant to or upon the demised premises, except said trade fixtures, shall when made, at once be deemed to be attached to the freehold, and become the property of the landlord, and at the end or other expiration of the term, shall be surrendered to the landlord in as good order and condition as they were when installed, reasonable wear and damages by the elements excepted."

Section 1101(b)(9) of the Tax Law defines the term capital improvement as: ". . . An addition or alteration to real property which: (i) Substantially adds to the value of the real property; and (ii) 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."

The installation in question substantially adds to the value of the real property, thus satisfying the criterion set forth in subparagraph (i) of the quoted statutory provision. Further, it appears from Petitioner's description that removal of the fire sprinkler system would cause material damage to the real property to which it is affixed. The requirement contained in subparagraph (ii) is thus satisfied. Finally, it appears from both the manner of installation and the above-quoted lease provision that the installation is intended to be permanent. 100 Park Avenue v. Boyland 144 NYS 2d 88, aff'd 309 N.Y. 685; Flah's of Syracuse, 89 A.D. 2d 729 (1982); Beaman Corporation, State Tax Commission Advisory Opinion, August 19, 1982, TSB-A-82(32)S. As the court noted in Flah's, supra, "pursuant to petitioner's leases, title to the improvements vested in petitioner's landlords immediately upon their installation with the improvements to become part of and remain in the premises, thereby establishing that the improvements were intended as permanent installations." The third and final requirement is thus satisfied. Accordingly, the subject installation constitutes a capital improvement within the meaning of section 1101(b)(9) of the Tax Law, and the receipts from the installation of such system are not subject to sales or use tax.

Tax Law §1105(c)(3)(iii); Ellen Nassau Corporation, State Tax Commission Advisory Opinion, February 16, 1983.

DATED: March 7, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau