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

TSB-A-86 (12)S
Sales Tax
March 26, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION PETITION NO. S851024A

On October 24, 1985 a Petition for Advisory Opinion was received from Multi-View Communication, Inc., P.O. Box 589, Ontario, N.Y. 14519.

The issue raised is whether satellite dish television antennas installed by Petitioner constitute capital improvements within the meaning and intent of Article 28 of the Tax Law.

Such antennas are welded or attached by other means to a pole sunk in a concrete base which is set into the ground. The satellite system is wired to the electric power supply of the customer's building and to the television receivers.

Section 1101(b)(9) of the Tax Law defines the term "capital improvement" as an addition or alteration to real property which meets all three of the following criteria:[It]

"(i) Substantially adds to the value of the real property, or appreciably prolongs the useful life 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 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 [2/81], Classification of Improvements and Repairs to Real Property for Sales Tax Purposes, pg. 7; Matter of Slattery Associates, Inc., Decision of the State Tax Commission, Aug. 16, 1977; STH 77-65; 20 NYCRR 528.12[c][3]).

The satellite dish, however, is considered 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 satellite dish becomes a permanent part of the real property. Accordingly, as its installation fails to meet the second condition set forth in the provisions of the Tax Law quoted above, it does not constitute the performance of a capital improvement. Petitioner's charges to its

customers, both for the tangible personal property sold and for the service of its installation, are subject to tax. (Tax Law, 1105[a], 1105[c][3]). In such instance, Petitioner need not pay tax on the tangible personal property purchased by it for resale to its customer, upon presentation to its vendor of a properly completed Contractor Exempt Purchase Certificate (Form ST-120.1).

Petitioner inquires whether sales tax paid on the satellite dish would negate an increase in the customer's real property tax liability. Regulation section 901.1 provides that an advisory opinion may be requested only with respect to taxes administered by the State Tax Commission. (20 NYCRR 901.1) Since the real property tax is not a tax administered by the State Tax Commission, this question cannot be answered within the context of an advisory opinion. However, it should be noted that the classification of an item for real property tax purposes will not by itself determine such property's status for purposes of the sales tax law. (See: Matter of Robert Roberson v. State Tax Commission, 65 AD2d 898).

Where Petitioner performs a capital improvement (e.g. installment of the concrete foundation), it must pay sales tax on its purchase of materials, but is not required to collect tax on its charge to its customer for such capital improvement if Petitioner receives from its customer a properly completed Certificate of Capital Improvement (Form ST-124). (Tax Law 1101(b)(4), 1105(c)(3)(iii), 1132(c); 20 NYCRR 527.7(a)(3) and 532.4. See also Technical Services Bureau Memorandum TSB-M-82(17)S).

Finally, it should be 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 so separately stated, tax must be collected on the entire amount charged. (20 NYCRR 533.2(a)(1); (b)(2)).

DATED: March 26, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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