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

TSB-A-86(27)S
Sales Tax
July 21, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION PETITION NO. S851112A

On November 12, 1985, a Petition for Advisory Opinion was received from Western Hills Operating Co., Farrell Road and State Fair Blvd., Syracuse, New York 13209.

The issue raised is whether the installation of a sound and light system in Petitioner's lounge results in a capital improvement.

Petitioner operates a Holiday Inn and contracted to have a sound and light system installed in its lounge. The sound and light system consists of a D.J. booth, speakers, amplifiers, turntables, a 10' x 12' dance floor, and overhead lighting. The system is designed for a complete change in entertainment format and does not replace any previously existing structures of a like or similar nature.

Section 1105(c)(3) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the services of "installing tangible personal property, or maintaining, servicing or repairing tangible personal property not held for sale in the regular course of business...except for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law...."

Section 1105(c)(5) of the Tax Law imposes a tax on the receipts from every sale, except for resale, of the services of "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...."

The Sales and Use Tax Regulations define the term capital improvement to mean "...an addition or alteration to real property

(i) which substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property, and

(ii) which 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...." 20 NYCRR 527.7(a)(3)

To qualify as a capital improvement, an installation must meet each of the three requirements listed above.

The overhead lighting system described by Petitioner substantially adds to the value of the real property and becomes part of the real property inasmuch as it is physically incorporated into the ceiling of the building. However, it will qualify as a capital improvement only if it is intended to become a permanent installation. The intention of permanence must be determined based upon the circumstances of each case. For instance, the installation of an improvement in a leasehold under circumstances where the provisions of the lease require the lessee to remove the improvement upon termination of the lease evidences an intent to not make a permanent installation notwithstanding the affixation of the installation with a great degree of apparent permanence.

Since sufficient information is not available to determine the intention to make a permanent installation, no specific finding may be made regarding this installation.

Similarly, while a dance floor would substantially add to the value of the real property, it will qualify as a capital improvement only if it is permanently attached to the realty and intended to be permanent. If a dance floor is moveable or only minimally attached, it is not considered to become part of the real property or to be permanently affixed. In such a case, its sale is subject to tax under section 1105(a) of the Tax Law and any charge for the installation of the floor is subject to tax under section 1105(c)(3) of the Tax Law.

Since sufficient information is not available to determine the degree of affixation of the dance floor and the intention to make a permanent installation, no specific finding may be made regarding this installation.

The D.J. booth, speakers, amplifiers and turntables clearly retain their identity as tangible personal property when installed. They do not become part of the real property and are not affixed in such a manner that material damage would be caused to them or to the real property upon removal. Thus, the sale of such property is subject to the tax imposed by section 1105(a) of the Tax Law, and any charge for the installation is subject to tax under section 1105(c)(3) of the Tax Law.

DATED: July 21, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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