

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

TSB-A-87(13)S
Sales Tax
March 5, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S861028B

On October 28, 1986, a Petition for Advisory Opinion was received from McKesson Drug Company, 25 Industrial Park Road, Albany, New York 12206.

The issue raised is whether an addition to an existing conveyer system is a capital improvement and thus excluded from the imposition of sales tax.

Petitioner describes the addition to the conveyer system as follows:

(1) It is welded to the roof and structure supports of the building as well as being bolted into inserts in the cement foundation of the basic structure itself.

(2) It is intended to become permanent because the original system has been in place for over 15 years.

(3) The addition to the system was engineered and designed with multiple consultants and engineering firms specifically for the building in which it is located.

(4) The addition to the conveyer cannot fit and work as a unit in any other facility without major modifications which gives the conveyer limited value outside of the building for which it was designed.

(5) Removal is possible but once this is done, the conveyer system ceases to exist as a unit and becomes a pile of belts, rollers and motors.

Petitioner acknowledges that the conveyor could be removed from the real property without material damage.

Sales and Use Tax Regulations section 541.2(g)(1) provides as follows:

- (g) Capital improvement. (1) A capital improvement means an addition or alteration to real property, which:
- (i) substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property.
 - (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 criteria for a capital improvement must be met in their entirety. The inability to meet any one of the three conditions will prevent the property in question from qualifying as a capital improvement.

Conveyers and most other forms of machinery and equipment normally require some form of affixation to real property. However, the test is not merely whether such machinery and equipment is affixed to real property. Rather, the test is whether the machinery and equipment is affixed to such a degree that it loses its separate identity and becomes part of the real property or to such a degree that removal would cause material damage to the property or the article. Material damage is not considered to exist merely because the property in question is worth less when it is removed than it was worth when it was installed and in operating condition.

Within the context of the real property tax, it has been determined that ski lifts were removable without material damage where "the towers were attached by long bolts set into poured foundations and the removal process, simply enough, involved no more than its cutting and severance of the bolts to permit the towers to be lowered gently to the ground and trucked to its new site." West Mountain Corporation v. Miner, 85 Misc 2d 416(1976).

Similarly, within the context of the sales tax, it has been held that various amusement park rides which were all bolted into bases, but which could be readily removed without damage to the property, were not improvements to real property. Charles R. Wood Enterprises, Inc. v State Tax Commission, 67 AD 2d 1042(1979).

Based on the above, the mere bolting and welding of equipment to real property does not, in and of itself, create the degree of permanence necessary to establish that a particular installation is a capital improvement. Consequently, the installation of Petitioner's conveyer system does not qualify as a capital improvement.

DATED: March 5, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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