

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

TSB-A-87(18)S
Sales Tax
April 28, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO: S870109A

On January 9, 1987, a Petition for Advisory Opinion was received from Alfred E. Luckette Jr. DBA Alfran Modern Home Products, 7824 Saintsville Road, Hicksville, New York 13082.

The issue raised is whether the sale and installation of a water distillation unit by Petitioner results in a capital improvement to real property and, if so, the proper treatment of such sale and installation for sales and use tax purposes.

The water distiller is a unit that changes the condition of water brought into a home. The distiller removes all minerals and chemicals (similar to a water softener) and makes the water pure and drinkable.

The distiller is incorporated into the existing water system of a home. The distiller is connected by using a saddle clamp on any cold water line or it may be installed by means of copper or plastic pipe.

Section 1105(c)(3) of the Tax Law imposes a tax on the receipts from the following service:

Installing tangible personal property ... or maintaining servicing or repairing tangible personal property ... 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 as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter

Section 1105(a) of the Tax Law imposes tax on "the receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1115(a) of the Tax Law states:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five ...

(17) Tangible personal property sold by a contractor, subcontractor or repairman to a person other than an organization described in subdivision (a) of section eleven hundred sixteen, for whom he is adding to, or improving real property, property or land by a capital improvement ... if such tangible personal property is to become an integral component part of such structure, building or real property

Section 1101(b)(4) of the Tax Law provides that a sale of tangible personal property to a contractor for use in making a capital improvement is a retail sale to such contractor.

Section 541.2(g) of the Sales Tax Regulations defines a capital improvement as:

(1)...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 the article itself; and
- (iii) is intended to become a permanent installation.

Sales Tax Publication 862 (Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property), page 17, classifies the following as capital improvements.

Capital Improvement

- Additions to piping systems
- Insulation of piping systems
- Installation or replacement of:

Garbage Disposals
Piping Systems

Sprinkler Systems
Water Softeners

Water Pumps

The water distillation unit is similar to those items classified as capital improvements in Publication 862 and meets all of the requirements of section 541.2(g) of the sales tax regulations. Thus, the installation of a water distillation unit as described above is a capital improvement.

Accordingly, receipts from the sale and installation of water distillers which qualify as capital improvements are not subject to sales tax when the customer submits to Petitioner a properly completed Certificate of Capital Improvement (Form ST-124). However, when Petitioner purchases property to perform a capital improvement, Petitioner's purchase of such property is deemed a retail sale and is, accordingly, subject to tax.

DATED: April 28, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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