

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

TSB-A-89 (30)S
Sales Tax
August 21, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890501A

On May 1, 1989 a Petition for Advisory Opinion was received from Joseph J. Guido d/b/a Guido's Electric & Bldg. Supply, 112 Park Avenue, Mechanicville, New York 12118.

The issue raised is whether the sale by Petitioner, Joseph J. Guido d/b/a Guido's Electric & Bldg. Supply, of an electric thermal storage heating unit or system constitutes a capital improvement when such unit or system is:

- 1) sold, uninstalled, to a homeowner who will perform the installation of such unit or system;
- 2) sold, uninstalled, to a homeowner who will hire a third party contractor to perform the installation of the unit or system;
- 3) sold, installed, to a homeowner, where such installation is to be performed by Petitioner; or
- 4) sold, uninstalled, to a contractor.

Petitioner, an electrical and building material supplier, sells electric thermal storage heating units and systems. The electric thermal storage heating units and systems store heat electrically, such storage ideally occurring during off-peak periods to take advantage of low cost off-peak electrical energy.

One system sold by Petitioner is a combination electric/solar storage system which will function in hydronic, forced air, and central air heat pump applications. This system's components include storage tanks, an expansion tank, systems electrical control panel(s), an indoor-outdoor automatic reset aquastat, a high limit control, an outdoor thermostat (for use in heat pump applications), temperature, pressure and altitude gauges, an insulation package, heating elements, modular tank seals, solar taps, and an aluminum unit jacket. Options for this system include a heat pump interface panel (for off-peak control of circulator pump and domestic hot water), a domestic hot water interface panel, a 6 or 8 gallon per minute domestic hot water heat exchange coil, a remote control panel and load shedding thermostats.

The heretofore mentioned system may be designed as the primary heating system, or may be installed as back-up or second stage to a heat pump.

Installation of this system requires that the system be connected to the electrical system by wires, the plumbing system and, if required, to the duct work.

Petitioner also sells electric thermal storage heaters which are self-contained individual wall or floor units. These units have a high heat retention feolite brick core which can store heat for up to 14 hours and then thermostatically release the heat as needed. These units can be installed

individually or as a zone system operated by a central microprocessor.

Installation of these units requires that each unit be wired into the electrical system and that the unit be fastened to the wall or floor by use of lag bolts. If installed for use with a central microprocessor, each unit must be connected, by use of telephone wires, to the central microprocessor.

Section 1105(a) of the Tax Law imposes a tax on the receipts from every sale of tangible personal property.

Section 1101(b)(9) of the Tax Law and Section 541.2(g) of the Sales and Use Tax Regulations defines "capital improvement" as 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; 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."

Section 541.5(b)(2) of the Sales and Use Tax Regulations states:

Labor and material charges. All charges by a contractor to the customer for adding to or improving real property by a capital improvement are not subject to tax provided the customer supplies the contractor with a properly completed certificate of capital improvement.

Section 527.7(b)(5) of the Sales and Use Tax Regulation states:

Any contractor who is making a capital improvement must pay a tax on the cost of materials to him, as he is the ultimate consumer of the tangible personal property.

When Petitioner sells an electric thermal heating unit or system to a homeowner, uninstalled, and such homeowner will install the unit or system or hire a third-party contractor to perform the installation, Petitioner is considered to be selling the homeowner tangible personal property which is subject to sales tax under Section 1105(a) of the Tax Law. Accordingly, Petitioner will be liable for collecting state and local sales tax on the total charge to the homeowner.

When Petitioner sells a heating unit or system to a contractor, Petitioner must collect state and local sales tax on the total charge to the contractor pursuant to Section 527.7(b)(5) of the Sales and Use Tax Regulations.

When Petitioner sells a unit or system, installed, to a homeowner, Petitioner is considered to be performing a capital improvement, as such installation meets the definition of a capital improvement as defined in Section 1101(b)(9)(i), (ii) and (iii) of the Tax Law. Accordingly, Petitioner will not be required to collect sales tax on the charges to the homeowner, provided the homeowner furnishes Petitioner a properly completed Form ST-124, Capital Improvement

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Certificate. However, Petitioner, as a contractor, will be liable for use tax on the cost of the unit or system to Petitioner, pursuant to Section 527.7(b)(5) of the Sales and Use Tax Regulations.

DATED: August 21, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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