

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

TSB-A-89 (48)S
Sales Tax
December 11, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890906A

On September 6, 1989 a Petition for Advisory Opinion was received from Multi-Pak Sales Corp., 400 Railroad Avenue, Hackensack, New Jersey 07601.

The issue raised is whether the installation of a trash compactor by Petitioner, Multi-Pak Sales Corp., results in a capital improvement to real property.

Petitioner manufactures trash compactors and sells them from a catalog at a published price. The equipment is wired and ready for installation under the trash chutes of the buildings where they are to be installed. Due to code restrictions in New York State, Petitioner installs the equipment at the customers' site.

Petitioner's compactors are positioned under trash chutes in apartment buildings. The compactor is then connected to the chute with a transition connection. The connection involves fitting the chute to the machine cavity to ensure that fire codes are adhered to. The machine is then bolted to the floor and wired to the building's electrical system. The equipment is readily removed from the building and only requires detachment from the electrical service and unbolting from the building floor when it must be removed for service or repair.

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.

Most 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

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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 Law, 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).

Therefore, the mere bolting and wiring 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 trash compactor does not qualify as a capital improvement and, therefore, it is not required to pay use tax on the cost of the materials used in the manufacture of compactors it sells in New York.

However, it is noted that if the Petitioner delivers and installs a compactor on the premises of a customer in New York State it must collect sales tax on the charges for the compactor, the installation of the compactor, and any materials used for the installation of the compactor unless the customer is otherwise exempt from the payment of sales tax.

DATED: December 11, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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