

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

TSB-A-91 (63)S
Sales Tax
September 23, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910730A

On July 30, 1991, a Petition for Advisory Opinion was received from N.R.G. Savers, 2507 James Street, Syracuse, NY 13206.

The issue raised by Petitioner, N.R.G. Savers, is whether the sale and installation of reflectors in fluorescent light fixtures is considered a capital improvement.

The reflectors are customized designed for specific light fixtures. In order to install the reflectors the sockets that hold the bulbs in place in the existing fixtures must be repositioned and centered in the fixtures. A four lamp fixture is reduced to two lamps and two lamp fixture to one lamp.

Section 1105(c) of the Tax Law imposes sales tax on the receipts from every sale, except for resale, of the following services:

* * *

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

* * *

(iii) 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, and. . .

Section 1101(b)(9)(i) of the Tax Law provides as follows:

(9) Capital improvement. (i) An addition or alteration to real property which:

(A) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and

(B) 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

(C) Is intended to become a permanent installation.

Publication 862, "New York State and Local Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property" states that only the original installation of fluorescent fixtures in the complete wiring and rewiring of structures or the upgrading of a service are considered to be capital improvements.

Accordingly, pursuant to Section 1101(b)(9) and Publication 862 since Petitioner's installation of reflectors is not in connection with the original installation of fluorescent fixtures in the complete wiring and rewiring of structures or the upgrading of a service, the installation of reflectors is not considered to be a capital improvement. Therefore, pursuant to Section 1105(c)(3) the installation of reflectors constitutes the installation of tangible personal property, and thus the sale and installation of such reflectors are subject to sales tax.

DATED: September 23, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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