

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

TSB-A-91 (74)S
Sales Tax
November 27, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910624B

On June 24, 1991 a Petition for Advisory Opinion was received from Marvin Rosenthal, 2 Nelson Avenue, Hicksville, N.Y. 11801.

The issue raised by Petitioner, Marvin Rosenthal, is whether the receipts from charges billed by Petitioner's client to a cable television company for performing installation services are subject to State and local sales tax.

Petitioner's client, a contractor, hereafter referred to as "Contractor", performs the following installation services for a cable television company, hereafter referred to as "Cable TV Co.".

- (1) Electronic testing and data recording performed on newly placed CATV amplifiers and associated equipment.
- (2) Street mapping and electronic design (draft).
- (3) Assembling of electronics for splicing in newly constructed cable plant including electronic testing.
- (4) Splicing of active and passive equipment in newly constructed cable plant. Activation and testing of equipment including identification of customer "hook-ups".
- (5) Wiring of individual apartments from junction box to outlet in a housing complex.
- (6) Replacement of defective passive components in newly constructed CATV plant.
- (7) Testing of existing CATV cable lines for signal leakage.
- (8) Splicing and activating aerial cable lines.
- (9) Opening trenches, placing CATV cables in the ground, and restoring the area.
- (10) Pulling cable through conduits previously placed in the ground.
- (11) Installing drop cable from a utility pole to a subscriber's house.
- (12) Electronically testing cables prior to installation in the cable plant.
- (13) Transferring CATV attachments from existing utility poles to newly placed utility poles.

Section 1101 of the Tax Law states, in part:

Definitions. --

(b) When used in this article for purposes of the taxes imposed by subdivisions . . .
(c) . . . of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs . . . (3) . . . (5) . . . of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax. . . .

(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.

Section 1105 of the Tax Law states, in part:

. . . there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property. . .

(c) The receipts from every sale, except for resale, of the following services:

(3) Installing tangible personal property, . . . or maintaining, servicing or repairing tangible personal property. . . except:

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land. . . as . . . defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter. . . .

(5) Maintaining, servicing or repairing real property, property or land, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement. . . .

Section 1115 of the Tax Law states, in part:

Exemptions from sales and use taxes.--(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in erecting a structure or building of an organization described in subdivision (a) of section eleven hundred sixteen, or adding to, altering, improving real property, property or land of such an organization. . . ; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

(16) Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land of an organization described in subdivision (a) of section eleven hundred sixteen,. . . ; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

(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, or for whom he is about to do any of the foregoing, if such tangible personal property is to become an integral component part of such structure, building or real property;. . . .

Section 541.2 of the New York State Sales and Use Tax Regulations states, in part:

Definitions. The words, terms and phrases used in this Part have the following definitions except when the context clearly indicates a different meaning:

(f) Real property, property, and land means real property, property or land as defined in subdivision 12 of section 102 of the Real Property Tax Law. Among the items considered in this classification are:

(4) telephone and telegraph lines, wires, poles and appurtenances;. . .

Generally, Contractor's receipts from charges to Cable TV Co. for performing the various services enumerated above will be considered as receipts from either the sale of tangible personal property, the sale of the service of installing, maintaining, servicing or repairing tangible personal property or, in certain instances, the sale of the service of maintaining, servicing or repairing real property and will be subject to State and local sales tax imposed under the provisions of Sections 1105(a), 1105(c)(3) and 1105(c)(5) of the Tax Law, respectively.

However, in any instance where Contractor's services are purchased by Cable TV Co. for the purpose of being resold to a subscriber as in (11) above and the subscriber is billed specifically for such services, Contractor's receipts for such charges to Cable TV Co. will not be subject to State or local sales tax provided Cable TV Co. gives Contractor a properly completed form ST-120, Resale Certificate.

Where Cable TV Co. enters into a lease agreement with the owner of the real property on or in which a cable television system will be installed and also enters into a separate franchise agreement with a municipality, Contractor's receipts from charges to Cable TV Co. for installation of that portion of the cable television system that is located on the property of the owner of the real property will generally be subject to the State and local sales tax imposed under Sections 1105(a), 1105(c)(3) and 1105(c)(5) of the Tax Law. However, if neither the lease agreement nor the franchise agreement require that the cable television system be removed upon expiration of the lease and franchise, respectively, and the lease provides that title to that portion of the installed system located on the property of the owner of the real property is to vest in the lessor and is to become part of and remain with the lessor's premises, the installation of the cable television system will be considered to satisfy the criteria for a capital improvement as defined under Section 1101(b)(9) of the Tax Law. Where Contractor performs any of the services enumerated above, with the exception of (2) and (11), in conjunction with a capital improvement such services will satisfy the criteria for a capital improvement. Accordingly, the receipts from Contractor's charges to Cable TV Co. for such services will be exempt from State and local sales tax under the provisions of Section 1115(a)(17) of the Tax Law. For purposes of establishing the exempt status of such a transaction, Cable TV Co. must give Contractor a properly completed form ST-124, Certificate of Capital Improvement.

Where Cable TV Co. and a municipality enter into a franchise agreement and such agreement does not require that the cable television system installed on or in the municipality's property be removed upon expiration of the franchise, but provides that title to the installed system is to immediately vest in the municipality and the installed system is to become part of and remain with the municipality's premises, the contractor's receipts from the installation of such portion of the system will be exempt from State and local sales tax under the provisions of Sections 1115(a)(15) and 1115(a)(16) of the Tax Law. Copies of signed contracts and government purchase orders will be sufficient evidence to establish the exempt status of the job between Cable TV Co. and the franchisor. Cable TV Co. and Contractor must have a signed document between them which

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identifies the project, location and exempt owner in order to substantiate the basis for tax exemption of the tangible personal property purchased for incorporation into the exempt project.

DATED: November 27, 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.