

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

TSB-H-81(49)S
Sales Tax
March 30, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801211B

On December 11, 1980, a Petition for Advisory Opinion was received from Orchard Park Veneer and Container Corporation, 227 Thorn Avenue, Orchard Park, New York 14127.

The issue raised is whether the construction of a new roof over an existing structure constitutes a capital improvement so as to exempt the receipts therefor from the sales tax imposed under Article 28 of the Tax Law.

A new roof was constructed over an old roof by the use of steel trusses spanning the old roof and supported by steel columns erected outside the present building. The old roof remains intact, with no common connection to the new roof. The new roof is independent of the old roof.

Section 1105(c) (3) of the Tax Law imposes a tax on the receipts from the service of "Installing tangible personal property...except for installing property which, when installed, will constitute an addition or capital improvement to real property...." The Sales and Use Tax Regulations define the term "capital improvement" as follows:

- "(3) A capital improvement is an addition or alteration to real property
 - (i) which substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property, and
 - (ii) which 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." 20 NYCRR 527.7(a) (3)

Inasmuch as the addition or alteration to real property consisting of the erection of the steel columns, steel trusses and the new roof appreciably prolongs the useful life of the real property, is an integral part of the real property and is intended to be a permanent installation, the same constitutes a capital improvement to real property within the meaning and intent of section 1105(c) (3) of the Tax Law. Accordingly, the receipts from the sale of the service of performing such installation are not subject to sales tax.

DATED: February 19, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER
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