

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-09(10)S
Sales Tax
February 26, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S081201A

Petitioner, [REDACTED] requested an advisory opinion as to whether its charges for the sale and installation of closed circuit television systems are subject to the sales tax. We conclude that Petitioner's charges for the installation of cable and wiring for the owner of the realty may qualify as a capital improvement to real property and thus would be exempt from tax. But its charges for the sale and installation of property that retains its identity as tangible personal property, such as cameras, monitors, and system controllers, are subject to sales tax. Whether charges for the installation of a closed circuit television system performed for a tenant qualifies as a capital improvement to the owner's realty will depend on the provisions of the parties' lease agreement.

Facts

Petitioner designs, sells, installs and services closed circuit television systems for commercial and industrial businesses. A simple system will consist of a camera, camera housing, mounting bracket, wire and cable, a television monitor and/or a recording device. More complex systems may have multiple cameras, a system controller, monitor(s) and a recording device such as a digital video recorder. A system controller is an integral component part of a multiple camera system. Once installed, a system may be expanded by adding additional cameras and other devices.

Wire and cable are installed within the walls and ceilings. Cameras are attached to the structure. Monitors and recording devices generally sit on a desk or in a rack, but may also be wall mounted. System controllers usually sit on a desk. The cameras, monitors, recording devices and system controllers are all attached to the wire and cable.

Generally, customers purchase these systems to protect their employees and property, but they may also be used for other purposes such as to observe a manufacturing process. Once installed, these systems are self-monitored by the customer.

Analysis

Petitioner asks about the application of sales tax to the installation of closed circuit television systems in commercial and industrial property.

Sales of such systems on an uninstalled basis are sales of tangible personal property subject to sales tax. See section 1105(a) of the Tax Law.

A company that sells closed circuit television systems on an installed basis would be considered a construction contractor when it installs the system components in the real property. See section 541.2(d) of the Sales and Use Tax Regulations. Charges for the installation of a closed circuit television system may be characterized as 1) a capital improvement to real property, 2) an installation of tangible personal property that remains tangible personal property after installation, or 3) a charge for protective services, depending on the facts.

When a company installs a closed circuit television system for the owner of the real property and the installation meets all three of the conditions set forth in section 1101(b)(9)(i) of the Tax Law, the work is considered to be a capital improvement. Thus, charges for installations that substantially add to the value of the real property, become part of the real property or are permanently affixed to the real property so that removal would cause material damage to the real property or the article itself, and are intended to be permanent, are not subject to sales tax. See sections 1105(c)(3)(iii) and 1115(a)(17) of the Tax Law.

The first condition for a capital improvement set forth in section 1101(b)(9)(i)(A) of the Tax Law is that an installation “substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property.” Though a closed circuit television system cannot be said to appreciably prolong the useful life of the real property, it is reasonable to conclude that it may substantially add to the value of the real property.

The second condition for a capital improvement set forth in section 1101(b)(9)(i)(B) of the Tax Law is that the closed circuit television system be installed in such a manner as to become part of the real property or be permanently affixed to the real property so that removal would cause material damage to the real property or to the closed circuit television system itself. Installations of circuit breaker panels, in-wall wiring, additional circuits to electrical systems, main power boxes, and light fixtures as part of the realty would meet this second condition. See *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, Publication 862 (4/01). Where the cables, wires and other equipment in a closed circuit television system are installed in a manner similar to the building’s electrical system, circuit breaker panels and other items listed above so that they become a part of the real property, their installation would meet the second requirement of section 1101(b)(9)(i) of the Tax Law.

The third condition for a capital improvement set forth in section 1101(b)(9)(i)(C) of the Tax Law is that the closed circuit television system be intended to become a permanent installation. In order to meet this condition, the system must become the property of the owner of the realty upon its installation. Thus with respect to an installation performed for a tenant or occupant that, upon installation, becomes the property of the occupant, absent lease provisions showing a contrary intent, the closed circuit television system’s cables, wires, camera housings or other equipment installed into the ceiling and walls in a manner similar to the building’s electrical system, circuit breaker panels, and other items listed above are considered to be permanently affixed to the real property and intended to become a permanent installation.

Accordingly, closed circuit television system components that add value to the property, are installed so as to be considered permanently affixed to the real property in the same manner as the building’s electrical system, and become the property of the owner of the realty upon installation, are considered to meet the conditions set forth in section 1101(b)(9)(i) of the Tax Law to qualify as a capital improvement to real property. See *John Lombardi*, Adv Op Comm T & F, February 27, 2004, TSB-A-04(5)S.

Petitioner is considered to be a construction contractor for installations that qualify as a capital improvement to real property and is not required to collect sales tax from its customer on its charges for the installation. See section 541.2(d) of the Sales and Use Tax Regulations. Petitioner should obtain a properly completed *Certificate of Capital Improvement* (Form ST-124) from its customer. But Petitioner must pay tax on its purchases of the components so installed. Petitioner may not issue a resale certificate to purchase those items. Note, however, that, as discussed below, when tangible personal property that retains its identity as tangible personal property upon installation, is sold and installed in conjunction with the performance of a capital improvement, Petitioner must collect the appropriate sales tax upon the charges for that tangible personal property and the installation.

When installations of property are made for an occupant or tenant, it is presumed that the installation of that property is not intended to be permanent unless the lease indicates that title to the improvements is to vest in

the landlord and that the improvements are to become a part of the premises and remain in the premises. See *Beaman Corporation*, Adv Op St Tx Comm, August 19, 1982, TSB-A-82(32)S. However, where the conditions in section 1101(b)(9)(i) of the Tax Law discussed above are met for installations performed for commercial and industrial tenants of real property, and there is no provision in the lease or rental agreement between the property owner and tenant requiring removal of the system upon termination of the lease or rental agreement, such installations may also qualify as capital improvements to the real property. See *Matter of Flah's of Syracuse, Inc. v. James H. Tully, Jr. et al*, 89 AD 2d 729.

When Petitioner's installation of a closed circuit television system does not constitute a capital improvement, Petitioner will be considered to be installing tangible personal property that retains its identity as tangible personal property after installation. In the *Matter of Charles R. Wood Enterprises, Inc. v. State Tax Commn.*, 67 AD2d 1042, the court determined that certain amusement rides, even though bolted to the real property, were movable machinery or equipment, and thus were not capital improvements to real property. See also *Matter of West Mountain Corp. v. Miner*, 85 Misc2d 416. Likewise, in *Cornwell Energy Management, Inc.*, Adv Op Comm T & F, May 8, 2003, TSB-A-03(22)S, the Tax Department opined that motor controllers that were wired to a motor and bolted to real property, and required only unwiring and unbolting to be removed for service or repair, did not have the degree of permanence necessary to qualify as a capital improvement. Accordingly, where an installed closed circuit television system or its components can be removed from the real property without material damage to the system or components or to the real property, or are not intended to be a permanent installation, the installation is not a capital improvement to the real property and the charge or charges for the system, the system components, and their installation are subject to sales tax pursuant to sections 1105(a) and 1105(c)(3) of the Tax Law.

Thus, components of the system such as the video surveillance cameras and television monitors that are installed on brackets bolted to a wall, and the monitors, system controllers, and recording devices that sit on desks, and that can be readily removed from the premises and reused, are not considered permanently affixed to the real property, and therefore will not be considered a part of a capital improvement to real property. See *Matter of Gem Stores, Inc.*, Tax Appeals Tribunal, October 14, 1988, TSB-D-88(30)S. The charges attributable to sales and installation of these components are accordingly subject to sales tax.

However, current technology no longer requires the installation of video cameras on brackets bolted to the ceiling or wall. For example, the camera mounts and cameras may be recessed in the walls and ceilings and wired and installed in a manner similar to the building's electrical system, such that the installation of the cameras meets the conditions set forth in section 1101(b)(9)(i) of the Tax Law. In this case, the installed cameras would also constitute part of the overall capital improvement. See *John Lombardi, supra*.

When Petitioner installs a closed circuit television system or components of such a system that remain tangible personal property after installation, it is required to collect sales tax from its customer on the charges for that installation. In that case, Petitioner may purchase, without payment of sales tax, the tangible personal property used in the installation and actually transferred to the customer. See section 1101(b)(4)(i) of the Tax Law and section 541.5(b)(4)(iii), Example 1 of the Sales and Use Tax Regulations. If Petitioner has paid sales tax on the tangible personal property used in installations that are not capital improvements, it may apply for a refund or credit of the sales tax it paid on tangible personal property actually transferred to its customer. See section 1119(c) of the Tax Law.

If Petitioner installs a system where some of the components when installed constitute a capital improvement but others do not, Petitioner must collect sales tax on its entire charge for the installation of the system. However, if Petitioner separately states reasonable charges for the capital improvement portion and for

the components and installations that are not capital improvements, Petitioner must collect tax only on the charges attributable to the components and installations that are not capital improvements.

DATED: February 26, 2009

/S/
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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.