

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

TSB-A-10(37)S
Sales Tax
August 10, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100614A

On June 14, 2010, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its installation of window film is subject to sales tax.

We conclude that the installation of window film in connection with the original installation or complete replacement of a window constitutes a capital improvement. Petitioner's receipts for such an installation would not be subject to sales tax. The application of window film to an existing window would constitute the servicing of real property. Petitioner's receipts for such an installation would be subject to sales tax.

Facts

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is in the business of installing window film. The film has adhesive, which allows the film to stick to glass. Installed film adds strength to the window and protects against breakage of the glass. The installed window film can be removed only by scraping the film off, a process similar in result to the removal of a motor vehicle registration sticker from a car windshield.

Analysis

Tax Law section 1101(b)(9)(i) defines the term "capital improvement" as:

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.

Sales tax regulation section 527.7(b)(4) provides:

The imposition of tax on services performed on real property depends on the end result of such service. If the end result of the services is the repair or maintenance of real property such services are taxable. If the end result of the same service is a capital improvement to the real property such services are not taxable.

The application of window film or coating in connection with the original installation or complete replacement of a window is a capital improvement; the application of window film to an existing window is a taxable service to real property under Tax Law section 1105(c)(5). *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, Publication 862 (4/01), at 25.

Because charges for the installation of a capital improvement are not subject to sales tax, Petitioner is not required to collect sales tax from its customer on its charge for installing window film on new or replacement windows, as long as Petitioner receives a capital improvement certificate from the customer, as described in the next paragraph. However, it must pay sales or use tax on its purchase of the window film that is installed as part of a capital improvement. Tax Law section 1101(b)(4)(i), 20 NYCRR 541.5(b)(1). Petitioner will be required to collect sales tax on its charges for installing window film on an existing window. While its purchase of window film that is applied to an existing window would qualify for the resale exclusion, Petitioner must, as a contractor, pay sales and use tax at the time of its purchase of the film and then apply for a refund or credit after the film is installed. Petitioner may only claim a refund or credit if it has collected sales tax from its customer or the customer is an exempt organization described in section 1116(a) of the Tax Law and it gives Petitioner its properly completed exempt organization purchase certificate. Tax Law, section 1119(c), 20 NYCRR 541.5(d)(3).

If Petitioner is performing capital improvement work, it must obtain a Certificate of Capital Improvement (Form ST-124) from the customer within 90 days of the completion of the work and retain the certificate as part of its records. 20 NYCRR 541.5(b)(4). Petitioner's timely receipt of a capital improvement certificate in good faith releases it from the obligation to collect sales tax from its customer. Tax Law, section 1132(c). If Petitioner does not receive a properly completed capital improvement certificate from the customer, then it must collect tax on its charges to the customer.

DATED: August 10, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

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.