

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

TSB-A-11(26)S  
Sales Tax  
October 12, 2011

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100922A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED], on behalf of [REDACTED] (Petitioner). Petitioner asks whether it is required to collect sales tax on the receipts from the sale, lease, installation or repair of fire and burglar alarms, closed circuit television systems, and from the sale of monitoring services. It also asks when the Petitioner must pay sales or use taxes on its purchases.

We conclude that Petitioner's monitoring services are subject to sales tax under Tax Law section 1105(c)(8) as protective services and Petitioner's charges for the installation or repair of alarm or monitoring equipment will be subject to sales tax under the conditions outlined below. The taxability of Petitioner's purchases will depend on how they are used or consumed.

**Facts**

Petitioner is a leading supplier of electronic security, fire alarm, burglar alarm, video surveillance, access control equipment services, personal emergency response services, central station monitoring, and uniformed guard services. Petitioner provides its services to both residential and commercial customers throughout the United States. Petitioner sells, leases, repairs, and installs closed circuit televisions (CCTV) systems, as well as burglar and fire alarms for customers in New York. At least in some cases, Petitioner's installation work will entail the installation of electric wires, circuit breaker panels, main power boxes and cables within the walls and ceilings of buildings. Petitioner also installs cameras, door and window sensors, sirens, alarm bells, pull stations, keypads, smoke detectors and panic buttons.

CCTV systems consist of electrical wiring, cameras and television monitors. In a CCTV installation, 99% of the labor is dedicated to the wiring of the system to the customer's real property. The CCTV wiring is similar to the electrical wiring of a building.

**Analysis**

Petitioner presents eight specific questions as to the taxability of its receipts and purchases.

Question 1

Are Petitioner's receipts from the sale or lease of equipment that it installs or hires a subcontractor to install subject sales tax?

Answer

Assuming that Petitioner does not provide protective service in conjunction with the sale and installation of the tangible personal property, Petitioner's receipts for the sale or lease of the equipment

will be subject to sales tax unless the installation of the equipment that it sells to its customer results in a capital improvement.

The retail sale of tangible personal property is subject to sales tax under Tax Law section 1105(a). When Petitioner sells tangible personal property that it installs and that remains tangible personal property after installation, Petitioner is selling tangible personal property at retail.

All charges by a contractor (including charges for labor and material) to a customer for adding to or improving real property by a capital improvement are not subject to tax. *See* 20 NYCRR §541.5(b)(2). The charges to the customer for tangible personal property that becomes part of a capital improvement are not subject to sales tax because the contractor is the retail purchaser of such property. *See* 20 NYCRR §541.5(b)(1). When Petitioner acts as a contractor in installing tangible personal property that becomes part of a capital improvement, its receipts for such tangible personal property will not be subject to sales tax because Petitioner would not be selling tangible personal property at retail. In those situations, Petitioner must pay sales or use tax on its purchases of tangible personal property to be installed as part of a capital improvement.

The answer to this question is premised on Petitioner not providing any protective services in conjunction with the installation of the tangible personal property. As explained below, the sales tax status of the sale and installation of tangible personal property done in conjunction with the provision of a protective service subject to sales tax under Tax Law section 1105(c)(8) can be different from the sales tax status of the sale and installation only of tangible personal property.

The application for Advisory Opinion presents insufficient information to determine whether the installation of equipment defined generally constitutes a capital improvement. However, if Petitioner accepts in good faith a properly completed capital improvement certificate from a customer for whom it installs tangible personal property, Petitioner may deem the transaction a capital improvement job and pay sales and use tax accordingly. *See* 20 NYCRR §541.5(b)(4).

## Question 2

Are Petitioner's receipts from the sale of monitoring service and sale or lease of equipment subject to sales tax?

## Answer

The sale or lease of equipment in conjunction with the sale of a monitoring service is subject to sales tax. While monitoring service is always subject to sales tax under Tax Law section 1105(c)(8), the receipts for the transfer of the tangible personal property can be subject to sales tax under Tax Law section 1105(a) as the sale or lease of tangible personal property or subject to sales tax under Tax Law section 1105(c)(8) as part of the provision of a protective service depending on the type of tangible personal property furnished and the contract terms for the provision of the tangible personal property and service.

Protective and detective services include, but are not limited to, all services provided by or through alarm or protective systems of every nature, including, but are not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and

guard, patrol and watchman services of every nature, whether or not tangible personal property is transferred in conjunction therewith. Monitoring services qualify as protective services; therefore, Petitioner's receipts for monitoring service are subject to sales tax under Tax Law section 1105(c)(8).

A charge for equipment will be subject to sales tax under Tax Law section 1105(c)(8) when (1) the equipment is furnished in conjunction with a protective service, (2) the provider of service retains ownership or the right to remove the equipment, and (3) the equipment is not otherwise functional as a local monitoring service or in conjunction with other protective services offered by other providers. *See* TSB-A-06(31)S. Petitioner would be selling tangible personal property for purposes of sales tax in conjunction with a protective service if the tangible personal property is sold outright or the equipment is functional as part of a local monitoring service or other protective service offered by other providers. *Id.*

The answer to this question is premised on the Petitioner not installing the equipment. As explained below, the tax status of the sale and installation of tangible personal property can have different results depending on the nature of the installation work. The answer is also premised on the sale or lease of the equipment being optional, i.e., the equipment can be purchased without protective service. If the equipment must be purchased in conjunction with the purchase of a protective service, the charge for the equipment will be a receipt subject to sales tax under Tax Law section 1105(c)(8).

### Question 3

Is the sale or lease of equipment, the service of installing equipment and the service of protective monitoring subject to sales tax?

### Answer

As stated above, monitoring service is always subject to sales tax under Tax Law section 1105(c)(8). Unless the installation of the tangible personal property results in a capital improvement, the receipts for the sale or lease of tangible personal property and the installation of the tangible personal property other than in conjunction with the sale of protective or monitoring service as discussed in Answer 2 above will be subject to sales tax either under Tax Law section 1105(a) or section 1105(c)(3). If the installation of the tangible personal property qualifies as a capital improvement, neither a charge for the tangible personal property installed nor a charge for the installation will be subject to sales tax. Installation of tangible personal property in conjunction with the provision of protective or monitoring service will be taxable under Tax Law section 1105(c)(8).

Section 1101(b)(9) of the Tax Law defines "capital improvement" as follows:

(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.

The installation of leased tangible personal property is by definition not intended to be permanent; therefore, only the installation of tangible personal property that is sold outright can qualify as a capital improvement. *See* TSB-A-04(05)S; TSB-A-98(635)S.

Subject to the qualification about leased tangible personal property, the question of whether the sale and installation of tangible personal property qualifies as a capital improvement is a factually intensive. Generic descriptions of tangible personal property being installed and generalized descriptions of methods of installation lack the requisite detail to determine if the installation results in a capital improvement. *Cf. Matter of Building Contractors Association v. Tully*, 87 AD2d 909, 449 NYS2d 547 (1982). Petitioner's application for Advisory Opinion provides insufficient information about its installation of burglary and fire alarm systems to reach a conclusion about whether these installations qualify as capital improvements.

The description in Petitioner's Advisory Opinion petition of the installation of its CCTV systems is sufficient to conclude that the installations result in capital improvements subject to two qualifications outlined below.

The first condition for a capital improvement set forth in section 1101(b)(9)(i)(A) of the Tax Law requires that an installation must "substantially add to the value of the real property, or appreciably prolong the useful life of the real property." TSB-A-09(10)S. Though a CCTV 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. *Id.*

The second condition for a capital improvement set forth in section 1101(b)(9)(i)(B) of the Tax Law is that the CCTV 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 CCTV 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* Publication 862, *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property* (April 2001), p 13. Where the cables, wires and other equipment in a CCTV 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. *Id.* However, 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. Therefore, these items 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 third condition for a capital improvement set forth in section 1101(b)(9)(i)(C) of the Tax Law is that the CCTV 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 the owner of real property, the CCTV 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.

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* TSB-A-82(32)S. 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 a specific lease provision states that title to the improvement immediately vests in the lessor upon installation, and the improvement becomes part of the premises and remain in the premises after 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 (3<sup>rd</sup> Dep't 1982).

In summary, CCTV 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* TSB-A-04(5)S.

#### Question 4

Are the receipts from the sale or lease of equipment, installation of the equipment, and monitoring service by Petitioner's subcontractors subject to sales and use tax.

#### Answer

The taxability of Petitioner's payment to a subcontractor for installation service depends on the taxability of the product sold by Petitioner to which the payment relates, and in the case of Petitioner's purchase of tangible personal property, the taxability of the purchase also depends on what rights the Petitioner's customer has over the property.

If Petitioner uses a monitoring service purchased from a subcontractor to provide a taxable protective service, Petitioner's purchase of the service will not be subject to sales tax because the subcontractor's service would be resold by Petitioner.

If Petitioner uses installation services purchased from a subcontractor to provide a taxable protective service, Petitioner's purchase of the service will be subject to sales tax under Tax Law section 1105(c)(3) or 1105(c)(5). TSB-A-06(31)S. In such case, Petitioner is considered to be the user and consumer of the installation service in the performance of Petitioner's protective service. *See Matter of Baker Protective Services, Inc. d/b/a Wells Fargo Alarm Services, Inc.*, Dec Tax App Trib, November 1, 2001; TSB-A-04(5)S.

If Petitioner uses installation services purchased from a subcontractor to provide an installation service subject to sales tax under Tax Law section 1105(c)(3) or 1105(c)(5), Petitioner's purchase of the service would not be subject to sales tax because it would qualify for the resale exclusion.

If tangible personal property purchased by Petitioner from a subcontractor is not sold by Petitioner as tangible personal property, Petitioner is the retail purchaser of the property and would owe sales or use tax on the purchase. As explained in the answer to question 2, for purposes of sales tax, Petitioner is not selling tangible personal property that is used in conjunction with the provision of a protective service when Petitioner retains ownership over the property or the right to remove the property, and the tangible personal property is not otherwise functional in conjunction with protective services offered by other providers. Because the tangible personal property is deemed to be used by Petitioner in the performance of its service, Petitioner's purchase of the property fails to qualify as a purchase for resale as such or as property actually transferred to the customer in performance of the service for the purposes of section 1101(b)(4)(i) of the Tax Law.

Question 5

Is installation labor subject to sales tax?

Answer

A labor charge for installing tangible personal property is subject to sales tax unless the installation results in a capital improvement.

A labor charge for installing tangible personal property is a receipt for a service, which may be taxable under Tax Law section 1105(c)(3) or 1105(c)(5). As explained above in the answers to question 3, the taxability of an installation service depends on the end of result of the installation: an installation service is subject to sales tax unless the installation service results in a capital improvement.

Question 6

Are receipts for repair and maintenance calls performed directly by Petitioner or a subcontractor on Petitioner's behalf subject to sales tax?

Answer

The receipts for repair and maintenance calls are subject to sales tax under Tax Law section 1105(c)(3), 1105(c)(5) or 1105(c)(8). Repair and maintenance receipts are subject to sales tax under Tax Law section 1105(c)(8) if (1) the tangible personal property being serviced was provided by Petitioner in conjunction with one of Petitioner protective or monitoring services, (2) Petitioner retains ownership or the right to remove the tangible personal property, and (3) the tangible personal property is not otherwise functional as a local alarm or other monitoring service offered by other protective service providers. In all other cases, the receipts for repair and maintenance work would be subject to sales tax under Tax Law section 1105(c)(3) or 1105(c)(5). In sum, the taxability of repair and maintenance receipts will parallel the taxability of receipts for the installation of protective equipment.

Question 7

Are repair and maintenance service calls (labor and equipment) provided by Petitioner's employees and Petitioner's subcontractors subject to sales tax?

Answer

If Petitioner bills for repair and maintenance service calls, the taxability of the receipts will be same as the receipts addressed in the answer to question 6. If Petitioner does not bill a separate charge

for repair and maintenance service calls, the taxability of the receipt for the transaction will depend on the primary function of the transaction of which the service calls are a part. *Matter of SSOV '81 Ltd.*, Tax Appeals Tribunal, January 19, 1995. For example, if service calls are performed in conjunction with a protective service provided by Petitioner, the service calls are a component of the protective service.

Question 8

Are service agreements for a monthly fixed payment for limited or unlimited service calls provided by Petitioner or a subcontractor subject to sales tax?

Answer

Service agreements related to the repair or maintenance of protective equipment are subject to sales tax under Tax Law section 1105(c)(3), 1105(c)(5) or 1105(c)(8). Because service agreements are contracts for repair and maintenance, the precise sales tax status of the contract receipts would depend on the factors addressed in the answer to question 6.

DATED: October 12, 2011

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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.