

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

TSB-A-13(38)S
Sales Tax
October 21, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120316A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether its payment for the service of installing a water slide on real property that Petitioner leases is exempt from sales and use tax on grounds that the water slide qualifies as a capital improvement for purposes of sales and use tax. We conclude that the water slide constitutes a capital improvement. Therefore, the installation of the water slide is exempt from sales and use tax.

Facts

Petitioner operates in New York a water amusement park on real property that it leases. The term of the lease is 34 ½ years and a water park has occupied the property for over twenty years.

In 2008, Petitioner entered into a contract with a manufacturer for the design of a water slide and sale to Petitioner of the component parts for the slide. The purchase price was over \$420,000. The slide was designed and engineered for the specific terrain and soil conditions at Petitioner's amusement park. The contract with the manufacturer did not break down a price for the parts.

In the same year, Petitioner entered into a contract with a contractor for the installation at the New York amusement park of the water slide purchased from the manufacturer. The total contract price for the installation work was \$349,000.00. The "SCOPE and Cost of Work" section of the contract states: "[w]ork shall also include the following items shown below in accordance with the price allocation herein." The contract allocates the price as follows:

1. fiberglass pool wall and related materials (\$39,000);
2. filter, basket strainer and related materials (\$16,000);
3. pipe, fittings & valves (\$58,000);
4. pumps (\$14,000);
5. support concrete for the Tantrum, Tantrum slide, tower and pump (\$59,000);
6. Tantrum fiberglass ride section, ride supports and tower (\$103,000);
7. splash pool with all related equipment (\$28,000);
8. all pipes, fittings, valves, filter and pumps (\$32,000).

The water slide that was built is four stories high and over 300 feet long. The slide itself is made of fiberglass tube sections, which are secured to each other by bolts and adhesives to form a tunnel. The tubing when installed weighs aggregate approximately 28,000 pounds and has 5,000 gallons of water rushing through it every 60 seconds when operational.

The tubing is supported in part by two tall, hollow galvanized steel support columns at the top of slide. Attached as radial arms to the steel support columns are steel beams that are bolted to the tubing and the columns. The steel columns are bolted to concrete piers.

The tubing is indirectly supported at the bottom by multiple concrete columns. These concrete columns support a steel frame that is bolted to these columns and the tubing. The steel frame itself is comprised of parts that are bolted to each other.

The slide includes three water curtains, which are located at the top, in a straight section and at the bottom of the slide. The water for these curtains is supplied by external lines that are secured to the tubing.

The splash pool at the bottom of the slide has a fiberglass wall over a poured concrete floor. The pool stairs are poured concrete. The pool floor and stairs are covered with two coats of epoxy paint finish.

The splash pool is connected by underground pipes to a balance tank, which is an in-ground concrete pool used to chemically treat water that will flow through the slide. The balance tank is connected by underground pipes to a pump house, from which water is pumped into the slide by water lines attached to the tubing. The water lines that run from the pump house to the tubing are attached to the tubing by male/female sleeves, which are bonded to the lines and tubing with an epoxy. The pump house, which contains pumping equipment, is a cement block building and has a concrete foundation.

Access to the top of the slide is provided by a forty foot high, wood start tower from which patrons enter the tubing. The tower includes stairs, a deck, wood railing system and aluminum hand rails. The wood supports for the tower are bolted to the stairs and deck. The stairs, deck, and wood railings are screwed into place.

Excavation and backfill was necessary for the installation of the pump house, concrete pilings, supports, water tower, pipe trenches, balance tank and splash pool. Petitioner selected the site for the water slide.

While it is possible to relocate the water slide to another site, Petitioner states that disassembling would damage and render unsafe portions of the slide. In addition, the removal would cause material damage to the underlying real property.

Petitioner's lease for the real property provides that all right, title and interest of the Tenant (i.e. Petitioner) in improvements on the property shall cease and expire on the expiration or termination of the lease and vest exclusively in the Landlord at that time.

Petitioner intends that the water slide is a permanent installation.

Analysis

Tax Law § 1105(c)(3) imposes sales tax on the receipts from every sale, except for resale, of the service of installing tangible personal property, except for installing property which, when

installed, will constitute an addition or capital improvement to real property. Section 1101(b)(9) of the Tax Law defines a 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 water slide installed by the Petitioner satisfies the criteria to qualify as a capital improvement and is analogous to the roller coaster held to be a capital improvement by the Tax Appeals Tribunal in Matter of Amusements of WNY, Inc., (Tax Appeals Tribunal, May 26, 2011). In light of the fact that the purchase price and installation costs for the water slide were approximately \$1 million, the water slide substantially added to the value of the property. Like the roller coaster, the water slide has a steel support structure bolted to concrete pilings attaching the structure to the ground. Material to the operation of the water slide are the in-ground splash pool and balance tank and the concrete pump house. Further, like the roller coaster, removal of the water slide would cause damage to parts of the structure. The Tax Appeals Tribunal concluded that the roller coaster, when viewed as a whole, constituted a capital improvement. Following that precedent, we conclude that the water slide is a capital improvement. The fact that the water slide is on leased property does not change the result because the underlying lease provides that improvements on the property vest in the landlord at the expiration or termination of the lease. Accordingly, the installation charges for this water slide are not subject to sales and use taxes.

DATED: October 21, 2013

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