

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

TSB-A-84(25)S
Sales Tax
October 15, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840516B

On May 16, 1984 a Petition for Advisory Opinion was received from SPI Communications Marketing, Inc., Clinton Road, RRI Box 40, Whitesboro, New York 13492.

The issues raised are (1) whether charges for labor in installing telephone systems is subject to the sales tax and (2) whether charges for the repair of telephone equipment is subject to the sales tax.

Section 1105(a) of the Tax Law imposes a sales tax on the receipts from the sale at retail of tangible personal property.

Section 1105(c)(3) of the Tax Law imposes a sales tax on the receipts from the services of installing, maintaining, servicing, or repairing tangible personal property not held for sale in the regular course of business, except, in relevant part, where the installation constitutes an addition or capital improvement to real property.

Accordingly, Petitioner's sales of telephone equipment will generally constitute sales of tangible personal property the receipts from which are subject to tax. Similarly, charges for the installation and repair of such property are likewise subject to tax. Petitioner inquires whether sales tax is due on charges for repairs made without the use of equipment. Such charges are subject to tax irrespective of the use or non-use of repair equipment.

In those instances where telephone equipment is sold on an installed basis and such installation constitutes a capital improvement, the charge for the equipment on an installed basis would not be subject to tax. Charges for repair services would be subject to tax pursuant to section 1105(c)(5) of the Tax Law, which imposes a tax on receipts from the service of repair to real property. For a discussion of the applicability of the capital improvement exclusion to components of telephone systems, see Benton and Bowles, Inc., State Tax Commission Advisory Opinion, January 26, 1983, TSB-A-83(3)S.

DATED: July 23, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.