

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

TSB-A-92 (33) S
Sales Tax
April 6, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920206D

On February 6, 1992 a Petition for Advisory Opinion was received from Fred H. Geller & Co., 290 Central Ave., Lawrence, N.Y. 11559.

The issue raised by Petitioner, Fred H. Geller & Co., is whether microfilming of blueprints, applications and inspection reports for architects, engineers and developers qualifies as a capital improvement.

Petitioner's client conducts its business in New York City. The City of New York through its building department requires that architects, engineers and developers submit blueprints, applications and inspection reports in a rigid specified manner. Any and all such documents must be submitted on microfilm consistent with the rules for such submission by the building department. In addition, various city and State agencies also require microfilming of certain documents consistent with their rules for such submissions, the purpose of which is to approve, advise or issue necessary capital improvement permits. Petitioner's client is in the business of providing microfilm of such documents. The submission of such microfilm documents to the Department of Buildings allows the issuance of permits and other necessary documentation to allow capital improvement work to begin.

Section 1105(a) of the Tax Law imposes a tax upon "[T]he receipts from every retail sale of tangible personal property.

Section 528.6(b)(2) of the Sales and Use Tax Regulations at Example 4 defines microfilm as tangible personal property as follows:

Example 4: A microfilm copy of a newspaper is not a newspaper and the sale of such microfilm is the sale of tangible personal property subject to tax.

Section 1105(c)(3) of the Tax Law imposes sales tax upon every sale, except for resale of the service of:

Installing tangible personal property excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

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(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter, and. . .(Emphasis supplied)

In order to meet the requirements for exclusion from sales tax as a capital improvement, tangible personal property must be installed as an addition or capital improvement to real property in accordance with the meaning and intent of Section 1105(c)(3)(iii) of the Tax Law. Since Petitioner's client's sales of microfilms of blueprints, applications and inspection reports do not meet this test they thus do not qualify as capital improvements. Moreover, the sales of such microfilms by Petitioner's client are subject to sales tax in accordance with the provisions of Section 1105(a) of the Tax Law and Section 528.6(b)(2) Example 4 of the Sales and Use Tax Regulations.

DATED: April 6, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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