

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

TSB-A-92 (71) S
Sales Tax
October 22, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920630D

On June 30, 1992 a Petition for Advisory Opinion was received from Yates Group, Ltd., 99 Alexander Avenue, Bronx, New York 10454.

The issue raised by Petitioner, Yates Group, Ltd., is whether charges by a subcontractor for erecting tubular scaffolding or pipe framing for use by a contractor during a major renovation or restoration of a building are subject to sales tax.

Petitioner, Yates Group, Ltd., is in the business of restoration of exterior walls. It is often necessary that tubular scaffolding be erected in order for Petitioner to perform restoration work on the exterior walls of tall buildings.

Tubular scaffolding or pipe framing is a temporary construction of steel pipe and wood planking which is universally used to assist in accessing the exterior walls of a building during capital improvement construction.

The tubing is erected in vertical self-supporting sections and temporarily braced into the building's walls. The height of the framing is determined only by the elevation at which capital improvement construction is to be performed on the building exterior.

At the top of the framing and at intermediate locations where work is to be performed, wood planking is laid across pipe framing to form a horizontal platform on which men can stand to accomplish their work.

Upon completion of the capital improvement work on the building exterior, the temporary pipe framing is dismantled and both the pipe and the wood are either brought to another building for reassembly, or returned to the storage yard until their services are again required at another construction site.

Section 541.8 of the Sales and Use Tax Regulations states, in part:

Charges for temporary facilities at construction sites. [Tax Law, §1105(c)(3)(5)] (a) General. Subcontracts to provide temporary facilities at construction sites, which are a necessary prerequisite to the construction of a capital improvement to real property, are considered a part of the capital improvement to real property. Charges for installation of materials and the labor to provide temporary heat, temporary electric service, temporary protective pedestrian walkways, and temporary plumbing by a subcontractor are therefore not subject to tax provided the subcontractor receives a copy of the properly completed certificate of capital improvement issued by the customer to the contractor

Section 541.8(a) of the Regulations provides that receipts from charges by subcontractors for providing certain temporary facilities which are considered necessary prerequisites to the construction of a capital improvement to real property and which are considered a part of the capital improvement are not subject to sales tax. However, the providing of scaffolding and the installation of scaffolding are not considered to fall within the definition of "temporary facilities" as such classification is defined in Section 541.8 of the Sales and Use Tax Regulations.

Accordingly, the charges to Petitioner by the subcontractor for erecting tubular scaffolding or pipe framing for use in a major renovation or restoration of a building are subject to State and local sales tax regardless of whether Petitioner owns the scaffolding or leases or rents the scaffolding and regardless of whether Petitioner is performing a capital improvement or a repair.

DATED: October 22, 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.