

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

TSB-A-92 (81) S
Sales Tax
November 27, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920814A

On August 14, 1992 a Petition for Advisory Opinion was received from Energy Saving Technologies, Inc., 15 Rector Court, Bergenfield, New Jersey.

The issue raised by Petitioner, Energy Saving Technologies, Inc., is whether the removal of an existing lighting system and replacing it with a new lighting system qualifies as a capital improvement.

A business which is one of Petitioner's customers is removing a lighting system in order to upgrade to more efficient lighting. The power company will rebate to the customer a specific amount for each fixture system replaced. The old fixture must be completely removed and replaced with a system which meets the power company's efficiency specifications.

The new lighting system provides similar light levels while using half the energy of the existing system. The new lighting system has a value that is close to double the cost of what the existing lighting system could be replaced for. The lighting system will be permanently affixed to the real property as each fixture is hardwired into the building's electrical wiring and has a life expectancy of decades. The contractor is providing both the materials and the labor in connection with the installation of the system.

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

Section 1101(b)(9) of the Tax Law and Section 541.2(g) of the Sales and Use Tax Regulations defines a capital improvement as an addition or alteration to real property which (i) substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and (ii) 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 (iii) is intended to become a permanent installation.

Section 541.5(b)(2) of the Sales and Use Tax Regulations states:

Labor and material charges. All charges by a contractor to the customer for adding to or improving real property by a capital improvement are not subject to tax provided the customer supplies the contractor with a properly completed certificate of capital improvement.

Section 527.7(b)(5) of the Sales and Use Tax Regulations states:

Any contractor who is making a capital improvement must pay a tax on the cost of materials to him, as he is the ultimate consumer of the tangible personal property.

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When a contractor sells a complete installed lighting system as described above it is considered to be performing a capital improvement, as such installation meets the definition of a capital improvement as defined in Section 1101(b)(9) of the Tax Law and Section 541.2(g) of the Sales and Use Tax Regulations. Accordingly, the contractor will not be required to collect sales tax on the charges to the customer for the lighting system, provided the customer furnishes the contractor with a properly completed Form ST-124, Capital Improvement Certificate. However, the contractor will be liable for sales or use tax on the cost of the materials used in the lighting system pursuant to Section 527.7(b)(5) of the Sales and Use Tax Regulations.

DATED: November 27, 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.