

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

TSB-A-93 (62) S
Sales Tax
November 30, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930712A

On July 12, 1993 a Petition for Advisory Opinion was received from Ecoturf Technologies, Inc., 1727 Veterans Memorial Highway, Suite 101 Islandia, New York 11722.

The issue raised by Petitioner, Ecoturf Technologies, Inc. is whether the installation of the ECOTURF 2000 SYSTEM, a mechanical device used in conjunction with an underground sprinkler system, is a capital improvement.

Petitioner developed and patented a mechanical device which is used in conjunction with an underground lawn sprinkling system. The device is used to control the fertilization of lawns with an organic fertilizer which is both environmentally safe and economically efficient.

Petitioner's device, marketed as the ECOTURF 2000 SYSTEM, will be sold either as part of a new underground water sprinkling system, or, as an addition to an existing system. In addition to monitoring and controlling the distribution of fertilizer, the system will also reduce the amount of water needed to adequately maintain a lawn. Research and development is currently underway to permit the use of the system to monitor and control other outside property functions such as lighting and security.

In order to use the device with an existing underground system, certain permanent changes must be made to that system requiring the services of a licensed plumber who is also qualified to install the device. The system will not be sold to an individual unless it will be installed by a qualified installer.

The device will substantially increase the value of the property under normal circumstances. For example, a 10 acre business campus with an existing sprinkler system could save \$10,000 per year in lawn maintenance costs if the device was installed. This savings would generate higher operating profits for the property which in turn would increase the value of the property.

Once the device is installed, removal would cause material damage to the sprinkler system and would require the plumbing services of a qualified installer to remove it.

The device is intended to become a permanent installation.

Section 1101(b)(9) of the Tax Law defines a capital improvement as:

(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.

New York State Department of Taxation and Finance, Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property, Publication 862 (1/90) at page 14 states that the original installation or complete replacement of underground lawn sprinkler systems are a capital improvement. The Publication further states that the repair or replacement of centrifugal pumps, pump controllers, remote control valves, sections of pipings, sprinklers, controllers and sprinkler heads in underground lawn sprinkler systems are considered to be the repair maintenance or installation of tangible personal property and thus subject to sales tax.

Since the original installation or complete replacement of an underground lawn sprinkler system is considered to be a capital improvement, it therefore follows that the original installation or the complete replacement of the ECOTURF 2000 SYSTEM, as described above, as part of or as an addition to an underground lawn sprinkler system is considered to be a capital improvement in accordance with the meaning and intent of Section 1101(b)(9) of the Tax Law.

It is noted that the replacement of an existing pump with an ECOTURF 2000 SYSTEM will not qualify as a capital improvement.

DATED: November 30, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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