

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

TSB-A-95 (7)S
Sales Tax
February 15, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941017A

On October 17, 1994, a Petition for Advisory Opinion was received from Alfred Arthur Hulse, 1990 New York Ave., Huntington Station, New York 11746.

The issue raised by Petitioner, Alfred Arthur Hulse, is whether the "Guniting" of an existing swimming pool qualifies as a capital improvement for sales tax purposes.

Guniting of a pool consists of coating an existing in ground concrete swimming pool with marble dust. The guniting prolongs the useful life of the pool by ten to fifteen years.

Section 1105(c)(5) of the Tax Law imposes a tax on maintaining, servicing or repairing real property as distinguished from adding to or improving real property by a capital improvement.

Section 541.2(g) of the Sales and Use Tax Regulations defines the term capital improvement as follows:

Capital improvement. (1) A "capital improvement" means 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;
- (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 527.5(a)(3) of the Sales and Use Tax Regulations states that "[M]aintaining, servicing and repairing are terms which are used to cover all activities that relate to keeping tangible personal property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition."

It has been held that the application of "palgard coating" to storage tanks to prevent corrosion did not constitute a capital improvement but instead was subject to tax under section 1105(c)(5) of the Tax Law as maintaining, servicing or repairing real property. (Pierce & Stevens Chemical Corp. Dec. St Tx Comm., October 5, 1984, TSB-H-85(9)S) The estimated life of "palgard coating" was approximately ten years.

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The application of marble dust in the instant case and "palgard coating" are similar in that both coated real property and both lasted approximately the same time.

Therefor, in accordance with sections 541.2(g) and 527.5(a)(3) of the Sales and Use Tax Regulations and Pierce & Stevens Chemical Corp., *supra* the guniting of a pool as described by Petitioner is not a capital improvement but is taxable as a repair or maintenance of real property in accordance with section 1105(c)(5) of the Tax Law.

DATED: February 15, 1995

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

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