

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

TSB-A-98(60)S
Sales Tax
September 9, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980601A

On, June 1, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from James H. Rambo, Inc., 229 Bishops Lane, Southampton, New York 11968.

The issue raised by Petitioner, James H. Rambo Inc., is whether floating docks and ramps are considered to be capital improvements.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner constructs floating docks which are connected to the main dock by a ramp. The floating docks move vertically as the tides change. Site specific permits are required by state, local and federal regulatory agencies for the floating docks.

Each floating dock is designed specifically for a particular site, based on the following factors:

- a. Length and draft of vessel
- b. Depth of the water at mean low tide
- c. Extent of tidal interchange (range of tide, change in feet)
- d. Number of boats to be moored
- e. Width of water at site

The owners of these structures consider them permanent in that they increase the market value of their property. The tax assessors consider them when assessing the properties (they add considerable value to the property). They are not interchangeable without considerable changes in the structures. (Again, all docks are site specific only).

There are occasions when certain floating docks are removed from the water, usually during the winter season, when winter storms are imminent. Petitioner will remove the floating dock from the fixed piles or ramp and store the dock upland in a safe environment. This is a time consuming procedure and necessitates the use of heavy equipment, a work barge, and a crew of workmen. On occasion, when the docks are not placed in protective storage, they sustain considerable damage or they completely break loose and float away (usually also after considerable damage has been done). The ramps may be removed as well. After the storms, or winter season, the floating docks are then reattached to the ramps, catwalks or whatever design was approved by regulatory agencies.

Applicable Law

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

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 real property or article itself; and

(C) Is intended to become a permanent installation.

Section 1105 of the Tax Law provides, in part:

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(3) 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:

* * *

(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, 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....

Opinion

Although certain property may be classified as real property under Section 102 (12) (b) of the Real Property Tax Law, this is not determinative of the status of that property under Article 28 of the Tax Law. (Matter of Broadway Mobile Homes Sales Corp. v. State Tax Commission, 67 AD2d 1029) In determining whether or not an installation qualifies as a capital improvement, all three conditions of Section 1101(b) (9) (i) of the Tax Law must be met, including that the

TSB-A-98(60)S
Sales Tax
September 9, 1998

installation becomes part of the real property or is permanently affixed to the real property. Showboat Restaurant, Inc., Dec St Tx Comm, May 6, 1983, TSB-H-83(135)S held that a showboat secured to steel pilings was not affixed to real property with the degree of permanency required to constitute a capital improvement within the meaning and intent of Section 1105(c)(3) of the Tax Law.

Petitioner's floating docks and ramps are not affixed to the shore or bottom with any permanency. In fact, the connection of the floating docks to the realty must be minimal in order to rise and fall with the tide. In addition, the floating docks themselves are designed to be movable so that in the winter or periods of adverse weather they can be placed on land or in a protected area. The ramps also are detachable from the main dock. Consequently, the floating docks and ramps sold and installed by Petitioner retain their identity as tangible personal property and do not qualify as a capital improvement. The sale and installation of the floating docks and ramps, therefore, are subject to sales tax.

DATED: September 9, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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