

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

TSB-H-80 (260) S  
Sales Tax  
December 28, 1980

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800818B

On August 18, 1980 a Petition for Advisory Opinion was received from Republic Steel Corporation, P.O. Box 6778, Room 420R, Cleveland, Ohio 44101.

The issue raised is whether receipts from the sale and installation of lockers by Petitioner are subject to the sales tax imposed under Article 28 of the Tax Law, or whether the same constituted a capital improvement to real property the receipts from which are exempt from such tax.

Petitioner placed lockers in preformed alcoves which were built for this purpose, and which conformed to the dimensions of the lockers. The lockers were attached to the wall at the rear of each alcove with either sheet rock anchors or toggle bolts. If a beam was encountered the anchor bolts were attached to the beam. The lockers were not anchored to the floor.

Section 1105(a) of the Tax Law imposes a tax on receipts from the sale of tangible personal property. Section 1105(c) (3) of the Tax Law imposes a tax on receipts from the service of "Installing tangible personal property...except for installing property which, when installed, will constitute an addition or capital improvement to real property...."

Section 527.7(a) (3) of the Sales and Use Tax Regulations defines the term capital improvement as "...an addition or alteration to real property (i) which substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property, and (ii) which 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." 20 NYCRR 527.7(a) (3).

Inasmuch as the lockers in question can be removed by removing the sheet rock anchors or toggle bolts with no material damage to either the lockers or the real property, the installation of these lockers constitutes the installation of tangible personal property and not a capital improvement.

Accordingly, the sale and installation of the lockers by Petitioner constitutes the sale and installation of tangible personal property the receipts from which are subject to tax under sections 1105(a) and 1105(c) (3) of the Tax Law.

DATED: December 10, 1980

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau

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JAMES H. TULLY, JR., COMMISSIONER    LOUIS M. JACOBSON, DEPUTY COMMISSIONER  
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