



Advisory Opinion: TSB-A-20(75)S

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] ("Petitioner"). Petitioner's business fabricates and installs awning structures, either as new installments or as a complete replacement of existing awnings. Petitioner asks whether these installations constitute a capital improvement and therefore are not taxable to the consumer. We conclude that the Petitioner's installment of awning structures are capital improvements and tax should not be charged to consumers.

Facts

Petitioner fabricates and installs awnings on pre-existing structures. The awning consists of metal framework, which is attached to a building, that is then covered with awning material. Awning material is made from PVC with high tenacity yarn or vinyl coated polyester. The awning covers are flame resistant and water proof and are designed to withstand various weather conditions. Petitioner does not use canvas awning material. The awning structures are designed to become permanent features of the buildings to which they are attached. Awning structures are attached securely to the buildings in such a manner that removal would cause damage to the structure.

Analysis

Tax Law § 1105(c) imposes tax upon the receipts from every sale, except for resale, of certain enumerated services. Included in the services subject to sales tax is the service of installing tangible personal property, whether or not any tangible personal property is transferred in conjunction therewith, except if the installed property will constitute an addition or capital improvement to real property. Tax Law § 1105(c)(3). A capital improvement is defined as follows:

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.

Tax Law § 1101(b)(9)(i); see also 20 NYCRR 541.2(g)(1).

Installations will be capital improvements only if they meet all three criteria listed in Tax Law § 1101(b)(9). See TSB-A-06(9)S. The Department has previously determined that the installation or replacement of existing awnings (other than canvas) constitutes a capital improvement for purposes of Tax Law § 1101(b)(9). See Publication 862 (4/01), *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*; TSB-A-92(11)S; TSB-A-98(76)S. Petitioner will not be required to collect sales if it receives in good faith Form ST-124, *Certificate of Capital Improvement*, within 90 days after the installation is performed. However, Petitioner must pay sales tax on its purchase of the materials that are installed as part of the capital improvement at the time of purchase. See Tax Law § 1101(b)(4); TSB-A-15(32)S; TSB-A-12(6)S.

DATED: December 1, 2020

/s/

DEBORAH R. LIEBMAN
Deputy Counsel

Note: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.