

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-20(6)S
Sales Tax
May 26, 2020

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner) seeking guidance on whether its installation of certain partitions qualifies as a capital improvement under Tax Law § 1101(b)(9). We conclude that the installations described by Petitioner are capital improvements and are exempt from sales tax pursuant to Tax Law § 1105(c)(3).

Facts

Petitioner installs different types of wall partitions. The partitions offer flexibility in room definition and are popular choices for hotel meeting rooms, convention centers, and commercial facilities. Petitioner questions whether some of its partitions and their enclosures could meet the criteria of capital improvements as set forth in Tax Law § 1101(b)(9). In particular, Petitioner submitted shop drawings and manufacturer specifications for: (1) individual, omni-directional panel partitions; (2) paired panel partitions; (3) firewall strength, paired panel partitions; (4) electrically operated, lift panel partitions; (5) vertical folding door partitions; and (6) pocket door enclosures to hide unused partitions in a room.

The specifications describe the individual, omni-directional panel partitions as mounted on tracks above finished ceilings. The partitions have sixteen-gauge steel frames, which are nominally four inches thick and can reach a height of forty feet. The partitions are structurally made to withstand two hundred fifty pounds of force against fixed walls to prevent sound leaks. The paired panel partitions are almost identical, as the only difference is hinging of the partition sections. Additionally, the described firewall strength partitions are constructed to achieve a specific rating of fire resistance.

For the electrically-operated lift panel partitions and the vertical folding door partitions, the specifications describe structures like the above partitions, but with different mechanisms of retraction. The electrically-operated lift panel partitions open automatically, and retract into the ceiling to save floor space. The vertical folding door partitions do not retract into the ceiling, but rather fold overhead to form an awning. These partitions can close securely and serve as exterior doors.

A structural plan to account for the partitions' size and weight is required as part of any installation. Additionally, removal of the described partitions would require similar professional guidance of a building engineer or an architect. Any of these partitions, once removed, would be inoperable and disposed of as demolition debris.

Analysis

Tax Law § 1105(c)(3) imposes sales tax on the receipts from every installation of tangible personal property, but exempts from tax the installation of property that will constitute a capital improvement to real property. Tax Law § 1101(b)(9) defines a capital improvement as an addition to real property that (A) substantially adds to the value 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. *See also generally* TSB-A-11(24)S.

The partitions described herein by Petitioner are capital improvements. The described partitions are large, heavy devices designed to offer greater flexibility than more traditional walls. The partitions, in effect, replace more traditional walls and offer equal sturdiness of construction. Moreover, the pocket door enclosures are comparable to more traditional closets for the partitions. Neither can be removed without material damage to either the partitions or the surrounding structure, which evidences an intention of permanency. Accordingly, the described partitions and pocket door enclosures satisfy the criteria of a capital improvement. The required Certificate of Capital Improvement for any installation should be obtained in accordance with Tax Law § 1132(c) and 20 NYCRR 532.4.

DATED: May 26, 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.