

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance (“the Department”) received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether a hot water hydronic coil replacement and alterations to duct work in a heating system is considered a capital improvement. We conclude that Petitioner’s replacement of a hot water hydronic coil, which required duct alterations in a heating system, is considered a capital improvement and is not subject to sales tax.

Facts

Petitioner repairs, installs, and services heating, ventilation, and air conditioning (HVAC) units. Specifically, Petitioner replaced a hot water hydronic coil, which required duct alterations in a heating system. Petitioner first removed three feet of supply ducting and then fabricated new adaption duct work. Petitioner then installed a custom coil box. Finally, Petitioner used a transition piece to connect the new adaption duct work to the rest of the main supply ducting. All of the work was done using custom galvanized sheet metal ducting. Petitioner asks whether this replacement is considered a capital improvement and therefore not subject to sales tax.

Analysis

Tax Law § 1105(c)(5) imposes sales tax on receipts from every sale of the services of maintaining, servicing or repairing real property, but distinguishes these taxable services from adding to or improving the real property by a capital improvement. A capital improvement is defined in Section 1101(b)(9)(i) as an addition or alteration to real property that: (A) substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; (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.

Services to real property are classified as either a capital improvement or a repair, maintenance or installation service. Petitioner replaced a hot water hydronic coil, which is a part of the heating system, and did not replace the entire system. Generally, the repair or replacement of blowers, coils or compressors valves in a heating system is the repair of real property and is subject to sales tax. See Publication 862, *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, pp.17-18. However, Petitioner’s replacement of a hot water hydronic coil, which required alterations to duct work in a heating system, appreciably prolonged the useful life of the real property to which it was added. Removal of the hydronic coil, which was intended as a permanent installation, could cause material damage to the duct work itself. Therefore, the service to real property here is considered a capital improvement and

is not subject to sales tax. See Publication 862, p.18. However, any materials that Petitioner incorporated into the capital improvement are subject to tax. Tax Law § 1101(b)(4).

DATED: August 20, 2024

/s/

MARY ELLEN LADOUCEUR
Principal Attorney

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.