

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

TSB-A-81(42)S
Sales Tax
October 28, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810330B

On March 30, 1981 a Petition for Advisory Opinion was received from M & C Stove World, Inc., 630 N. Broadway, Rt. 110, Amityville, New York 11701.

The issue raised is whether Petitioner's sales of fireplace inserts, coal and wood burning stoves and solar energy systems and components constitute capital improvements to real property which are exempt from sales tax.

Petitioner is involved in selling fireplace inserts, coal and wood burning stoves, boilers and solar energy systems. Ninety percent of these sales are on an installed basis and ten percent are over the counter on an uninstalled basis. A solar energy system consists of collector panels mounted on the roof of a home. Installed pipe is run from the collectors to the basement and connected to the home's present hot water heating system.

Section 1105(a) of the Tax Law imposes a tax on: "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Section 1105(c)(3) imposes a tax on "Installing tangible personal property . . . except for installing property which, when installed, will constitute an addition or capital improvement to real property . . ."

The Tax Law and the Sales and Use Tax Regulations define a "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." Tax Law §1101(b)(9) and 20 NYCRR 527.7(a)(3). The Regulations further state: "Any contractor who is making a capital improvement must pay a tax on the cost of materials to him, as he is the ultimate consumer of the tangible personal property." 20 NYCRR 527.7(a)(5).

The installation of a free-standing wood or coal burning stove or fireplace insert does not meet the requirements of a capital improvement to real property and is subject to tax pursuant to section 1105(c)(3) of the Tax Law. See Department of Taxation and Finance Publication 862, Classifications of Improvements and Repairs to Real Property for Sales Tax Purposes. Sales of these units on an uninstalled basis are also subject to tax. Tax Law § 1105(a).

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The installation of a coal or wood burning boiler or a solar energy system which is permanently connected to the heating system of a structure constitutes a capital improvement to real property. When installing these units, Petitioner is liable for tax on the cost of all materials incorporated in the installation. 20 NYCRR 527.7(a)(5). However, since receipts from the sale of capital improvements are not subject to tax, Petitioner is not required to collect tax from the property owner. Tax Law § 1105(c)(3). Petitioner's sales of these units to contractors or others, uninstalled, are subject to tax. Tax Law § 1105(a).

DATED: October 7, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau