

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

TSB-A-84(2)S  
Sales Tax  
February 16, 1984

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830815A

On August 15, 1983 a Petition for Advisory Opinion was received from Empire Restoration Services, Inc., 112 Adler Street, Yonkers, New York 10705.

The issue raised is whether the process of "exterior restoration and preservation of buildings" performed by Petitioner constitutes a capital improvement exempt from sales tax.

Petitioner, a contractor, is in the business of chemically cleaning and restoring the exterior surfaces of buildings, "for the purpose of restoring to their original condition entire building exteriors." The process employed involves first the application of the appropriate chemical, followed by a water rinse, followed in turn by the application of a "protective chemical bonding agent" which protects and waterproofs the surface.

Section 1105(c)(5) of the Tax Law imposes a tax on the receipts from the service of "maintaining, servicing or repairing real property. . . as distinguished from adding to or improving such real property. . . by a capital improvement." Section 1101(b)(9) of the Tax Law defines the term "capital improvement" as an "addition or alteration to real property" which meets certain specified criteria. Section 527.7(a)(1) of the Sales and Use Tax Regulations provides that "maintaining, servicing and repairing are terms which are used to cover all activities that relate to keeping real property in a condition of fitness, efficiency, readiness or safety or restoring it to such condition." Section 527.7(a)(3) ex. 6 indicates that the "periodic repainting of a building is not a capital improvement." The service performed by Petitioner falls squarely within the definition contained in section 527.7(a)(1), and is sufficiently similar to the service described in section 527.7(a)(3) ex. 6, as to warrant a finding that the same constitutes the service of "maintaining, servicing or repairing real property." The receipts from such service are, accordingly, subject to sales tax.

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It is to be noted that while contractors, such as Petitioner, are required to pay sales tax on tangible personal property purchased for use or consumption in maintaining, servicing or repairing real property (Tax Law, §1101(b)(4)(i)), a refund or credit of such tax is due with respect to such tangible personal property where it becomes "a physical component part of the property upon which the service is performed." (Tax Law, §1119(c)). Petitioner would therefore be entitled to a refund or credit of the tax paid on its purchase of the protective chemical bonding agent.

DATED: January 24, 1984

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau