

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

TSB-A-95 (29)S  
Sales Tax  
July 13, 1995

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941205C

On December 5, 1994, a Petition for Advisory Opinion was received from Intertech Satellite Systems, Inc., 6523 Transit Road, Lockport, NY 14094.

The issue raised by Petitioner, Intertech Satellite Systems, Inc., is whether the original installation of a private cable television system constitutes a capital improvement or a sale of tangible personal property.

Petitioner is in the business of installing private cable television systems. The systems, when installed, add value to the real property. In addition the systems, which are installed on the private property of the owners, are intended to be a permanent installation. Removal of the materials and equipment would cause material damage to the system, either by physical damage or actual damage in the market value as to its resale value.

Petitioner compiled the following step-by-step list describing the installation process, the work performed and the materials used for the design and installation of a private cable system:

1. Proposal and Sale

- A. Preliminary information is sent to prospective customers.
- B. An appointment is set with the prospective customer to explain the cable system, review the property and evaluate any prints and plot plans that are available.
- C. All available information is compiled to form a prospectus to provide system information, cost and profit projections to potential clients.
- D. After all details are worked out, a contract is written and presented to the client.

2. Distribution and Head End Design

- A. A head end technician goes to site to determine location of the head end, downlink antennas, and off-air antenna tower. A technician checks for terrestrial interference, off-air interference and signal strength of local reception channels.

- B. A distribution technician meets with property manager to determine the proper method of post wiring the complex and the path to be taken for trunk link burial.
- C. A system designer meets with head end and distribution technicians to coordinate the location of all system components and cables.
- D. Design of the system is placed on a plot plan to designate the locations of head end, antennas, trunk cable, line extenders and cable pedestals for the installation crew.
- E. Data received from the site survey is reviewed to determine the proper head end equipment, antenna tower height, type of antennas and quantity of equipment to be used.
- F. A bill of materials is compiled from the above information and equipment is ordered from the manufacturers.

3. System Installation

- A. Local utilities are contacted to locate any underground piping, cable or other obstructions that could be damaged by trunk burial.
- B. Trunk cable is buried 18 inches deep with a vibratory plow and placed in a conduit under any road, sidewalk or other area that might be in danger of damaging the trunk cable.
- C. All buildings are post wired from a wall outlet in the main viewing area to a central location outside of building where cable pedestals will be placed.
- D. Technicians place cable TV pedestals, splices trunk cable, taps, line extenders, directional couplers and drop lines.
- E. The head end is constructed, adjusted and balanced.
- F. The system is activated, balanced and checked for picture quality.

4. Post Installation

- A. The system is re-balanced and checked for picture quality within 48 hours of complete activation.
- B. An audit is performed from a list provided by building management to trap out nonsubscribing customers.
- C. On site personnel are trained to connect and disconnect subscribers and to troubleshoot minor problems. The system is secured with pedestal locks to prevent signal theft.

- D. The technician reviews the system to draft "as-built" for future system maintenance and reference.

Section 1105 of the Tax Law provides, in part, as follows:

Sec. 1105. Imposition of sales tax.-- . . . there is hereby imposed and there shall be paid a tax . . . upon:

- (a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

\* \* \*

- (c) The receipts from every sale, except for resale, of the following services:

\* \* \*

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

\* \* \*

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or lands are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter. . .

Section 1101(b)(9)(i) of the Tax Law provides as follows:

- (9) Capital improvement. (i) 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.

Section 1115 of the Tax Law provides, in part, as follows:

Section 1115. Exemptions from sales and use taxes--(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

\* \* \*

(17) Tangible personal property sold by a contractor, subcontractor or repairman to a person other than an organization described in subdivision (a) of section eleven hundred sixteen, for whom he is adding to, or improving real property, property or land by a capital improvement, or for whom he is about to do any of the foregoing, if such tangible personal property is to become an integral component part of such structure, building or real property; provided, however, that if such sale is made pursuant to a contract irrevocably entered into before September first, nineteen hundred sixty-nine, no exemption shall exist under this paragraph.

In Multi-View Communications, Inc., Ad Op St Tx Comm, March 26, 1986, TSB-A-86(12)S the State Tax Commission advised that concrete foundations, including poles permanently installed therein, constitute a capital improvement to real property. However, a satellite dish is considered equipment which retains its identity as tangible personal property after installation, whether it is welded or otherwise affixed to the pole. (emphasis added)

In Marvin Rosenthal, Adv Op Comm T&F, November 27, 1991, TSB-A-91(74)S the Commissioner advised that services performed in the installation of a cable television system such as electronic testing and data recording performed on newly placed CATV amplifiers and associated equipment, assembling of electronics for splicing in newly constructed cable plant, splicing of active and passive equipment in newly constructed cable plant, wiring of individual apartments from junction boxes to outlet in housing complex, opening trenches for placement of cable wiring and conduits and restoring the area, and splicing and activating aerial cable lines satisfied the criteria for a capital improvement when performed in conjunction with a capital improvement.

In the instant case, Petitioner, when installing a private cable television system, contacts local utility companies to locate any underground piping, cable or other obstructions that could be damaged by trunk burial. Next, using a vibratory plow Petitioner buries trunk cable and places such cable in a conduit in areas where the cable might be in danger of being damaged. Petitioner then runs wire from a wall outlet in the main viewing area of the building to a central location outside of the building where the cable pedestal will be placed. Petitioner then places the cable TV pedestal, splices the trunk cable, taps, line extenders, directional couplers and drop lines. Following this, the head end is constructed, adjusted and balanced.

In accordance with Multi-View Communications, Inc., supra, and Marvin Rosenthal, supra, certain services performed by Petitioner during their "System Installation" result in capital improvements within the meaning of that term as defined in Section 1101(b)(9)(i) of the Tax Law. Therefore, pursuant to sections 1105 and 1115(a)(17) of the Tax Law the receipts from the sale and

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installation of such tangible personal property would not be subject to sales tax. Pursuant to Marvin Rosenthal, supra, the burying of the trunk cable and conduits, the wiring of buildings from the wall outlet to the cable pedestal, the construction of the cable pedestal and the splicing and activating of the cable lines would satisfy the criteria for a capital improvement where the installation becomes affixed to the real property, is intended to be permanent and adds value to the property. However, pursuant to Multi-View Communications, Inc., supra, a satellite dish is considered equipment which retains its identity as tangible property after installation, whether it is welded or otherwise affixed to the cable pedestal. Therefore, the sale and installation of such satellite dish would not be considered a capital improvement and would be subject to sales tax.

DATED: July 13, 1995

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions  
are limited to the facts set forth therein.