

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

TSB-A-98(61)S
Sales Tax
September 9, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980520A

On May 20, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Anthony J. Dapolito, CPA, Dapolito and Company, 2234 Jackson Avenue, Seaford, New York, 11783. Petitioner, Anthony Dapolito, submitted additional facts relating to the Petition on July 6, 1998.

The issue raised by Petitioner, Anthony J. Dapolito, is whether the purchase and installation of custom athletic lockers at a private golf club are subject to sales tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner's client, a private golf club, purchased wooden athletic lockers and installed them at its facilities. The lockers were custom manufactured to the specifications of the golf club to be installed by the manufacturer within specific dimensions. The lockers are affixed to the premises with matching spacers, fillers, corners and moldings of the type used in the installation of kitchen cabinets and are intended to be permanent. The lockers are not similar to prefabricated steel lockers that are merely bolted to the wall. Removal of the lockers would damage the property and greatly reduce or eliminate the value of the lockers. Petitioner's client owns the real property where the lockers are installed. Petitioner states that the lockers are permanently installed.

Applicable Law and Regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(9) Capital improvement. An addition or alteration to real property which:

(i) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and

(ii) 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

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(iii) Is intended to become a permanent installation.

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.

Section 1105(c) of the Tax Law imposes a tax on the following:

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 land 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 1115(a) of the Tax Law provides, in part:

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.

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Opinion

Petitioner's client, a private golf club, installed custom wood lockers at its facility. These lockers were manufactured to the club's specifications and were installed by the manufacturer like custom kitchen cabinets. Removal of these lockers would result in damage to the lockers and reduce or eliminate their value. Section 1105(c)(3) of the Tax Law provides an exemption from sales tax for any installation of tangible personal property which results in a capital improvement. A capital improvement is statutorily defined as an addition or alteration to real property which substantially adds to the value of the property, is permanently affixed so that removal would cause damage to the property or the article itself, and is intended to be permanent. Since the custom wood lockers substantially add to the value of the property, and were permanently affixed to the property so that removal would cause damage to the property, they would meet the statutory test for a capital improvement as described in Section 1101(b)(9) of the Tax Law, if they are intended to be a permanent installation. The fact that Petitioner's client owns the real property to which the improvement is affixed and the nature of the installation indicates that the lockers were intended to be permanent. (Grumman Aerospace Corporation, Dec Tx App Trib, April 11, 1991, TSB-D-91(22)S) Therefore, these custom constructed lockers qualify as capital improvements under Section 1101(b)(9).

Sales tax is not due on the purchase from a contractor of installation services resulting in a capital improvement. See Section 1105(c)(3)(iii) of the Tax Law. The purchase from a contractor of the materials incorporated into a capital improvement is exempt from tax if the contractor also installs the materials for the purchaser. See Section 1115(a)(17) of the Tax Law. In that instance, the contractor would have been required to pay tax on the materials incorporated into the capital improvement. Since Petitioner's client purchased the lockers and installation of these lockers from the manufacturer, and the lockers qualify as a capital improvement, no sales tax is due from Petitioner's client on the purchase or the installation of these lockers. Whenever capital improvement work is performed, the purchaser of the installation service must provide the installation contractor with a Certificate of Capital Improvement (Form ST-124) within 90 days of rendition of the service to avail itself of this exemption from sales and use tax. See Section 1132(c) of the Tax Law and Section 532.4 of the Sales and Use Tax Regulations.

DATED: September 9, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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