

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

TSB-H-80 (173) S
Sales Tax
September 10, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800611B

On June 11, 1980, a Petition for Advisory Opinion was received from Enercon Service, Inc., 170 Wilbur Place, Bohemia, New York 11716.

The issue raised is whether or not the charges for the "start-up" of and warranty work on heating and air conditioning units installed on the rooftops of new buildings are subject to New York State sales tax.

Petitioner performs two types of service with respect to rooftop heating and air conditioning units installed by an affiliated company. First, petitioner performs "start-ups," consisting of checking the units, wiring them to the building and putting them into operation. Second, Petitioner services the units under a one year warranty. Where parts are purchased by Petitioner in connection with the latter service, sales tax is paid by Petitioner and the full amount is billed to the company which installed the unit.

Section 1105(c) (5) of the Tax Law imposes a tax on the receipts from the services of "Maintaining, servicing or repairing real property, . . . as distinguished from adding to or improving such real property, property or land, by a capital improvement" Section 527.7 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 The imposition of tax on services performed on real property depends on the end result of such service. If the end result of the services is the repair or maintenance of real property such services are taxable. If the end result of the same service is a capital improvement to the real property such services are not taxable." 20 NYCRR 527.7.

The installation of a rooftop air conditioning and heating unit is a capital improvement. Inasmuch as the "start-up" service constitutes a part of the installation process the same is not a service the receipts from which are subject to tax under Section 1105(c) (5) of the Tax Law. However, charges for service under the warranty are subject to such tax because that service constitutes the service of maintaining, servicing or repairing real property. Tax should be computed on the entirety of such charge. Petitioner may claim a credit under section 1119(c) of the Tax Law for the sales tax paid on any parts transferred to its customer in connection with such service.

Dated: August 25, 1980

s/ LOUIS ETLINGER
Deputy Director
Technical Services Bureau