

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

TSB-H-80 (199) S
Sales Tax
March 4, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800701A

On August 27, 1980, a Petition for Advisory Opinion was received from Fargo Manufacturing Company, Inc., 130 Salt Point Road, Poughkeepsie, N.Y. 12603.

The issue raised is whether or not certain work done on Petitioner's real property resulted in a capital improvement to that real property so as to render the receipts therefor exempt from the Sales and Compensating Use Taxes imposed under Article 28 of the Tax Law.

Petitioner had two contractors perform work on the roof of its manufacturing plant. One contractor provided flashing reinforcement, new roof drains, remedial roof repairs, restoration and complete coating of the roof. The second performed preliminary repairs and installed new expansion joints.

Section 1105(c) (5) of the Tax Law imposes a tax on the receipts from sales of the service of "Maintaining, servicing or repairing real property ... as distinguished from adding to or improving such real property ... by a capital improvement...." The Sales and Use Tax Regulations provide 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..." 20NYCRR527.7(a)(1) Such Regulations define the term capital improvement to mean "...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" 20 NYCRR527.7(a) (3)

Work of the type described by Petitioner relates to keeping real property in a condition of fitness or restoring it to such condition. Such work is designed merely to maintain the property in good condition, and does not substantially add to its value nor appreciably prolong its useful life.

Accordingly, the work done on Petitioner's real property constituted the service of maintaining, servicing and repairing real property, and not the making of a capital improvement. The charges made by the contractors for the same are therefore subject to sales tax, pursuant to section 1105(c) (5) of the Tax Law.

DATED: October 27, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau