

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

TSB-H-80 (261) S  
Sales Tax  
December 28, 1980

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800718A

On July 18, 1980, a Petition for Advisory Opinion was received from U.T.C. Group Inc., Plaza Seven, Latham, New York 12110.

The issue raised are (1) whether the installation of telephone systems by a private inter-connect company constitutes a capital improvement in all cases when sold to a taxable entity directly, so as to exempt the receipts therefrom from the sales tax imposed under Article 28 of the Tax Law, and (2) whether in such cases the vendor is required to obtain from the purchaser a certificate of Capital Improvement (ST-124).

Petitioner sells and installs telephone equipment, including entire systems and, on occasion, individual units to complement existing systems.

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 in this article." Section 1105(c) (3) of the Tax Law imposes a tax on receipts from the service of "Installing tangible personal property...except 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...."

Section 1115(a) (17) of the Tax Law exempts from the sales tax receipts from the sale of "Tangible personal property sold by a contractor, subcontractor or repairman to a person... 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...."

The sale and installation of a private telephone inter-connect system, such as one consisting of a power unit, cabling inside the customer's property and peripheral equipment such as telephones, constitutes a capital improvement, within the meaning of the statutory provisions quoted above, where the system is purchased by the customer and installed on the customer's property. The receipts from such sale and installation are not subject to the taxes imposed under sections 1105(a) or 1105(c) (3) of the Tax Law. It should be noted that these exemptions are applicable to the purchase by the customer of the inter-connect company. Such company must itself pay sales tax on the property purchased for the purpose of the sale and installation. Tax Law, §1101(b) (4).

Petitioner inquires whether it is required to take from its customers completed certificates of capital improvement. Petitioner is not subject to such a requirement. Where a capital improvement is rendered no sales tax is due and none should be collected, irrespective of the presence or absence of a certificate of capital improvement.

DATED: December 12, 1980

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau

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JAMES H. TULLY, JR., COMMISSIONER    LOUIS M. JACOBSON, DEPUTY COMMISSIONER  
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