

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

TSB-H-81 (44) S
Sales Tax
March 4, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801117C

On November 17, 1980 a Petition for Advisory Opinion was received from Richard P. Dyer, Esquire, 16th Floor, 909 Third Avenue, New York, New York 10022.

The issue raised is whether tangible personal property, to be incorporated as an integral component part of a capital improvement construction project for a non-tax-exempt organization, is subject to sales tax when sold by a subcontractor to a construction manager acting as the owner's agent and not as an independent general contractor.

Section 1115(a)(17) of the Tax Law exempts from sales and use taxes: "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...."

Where an individual acts as agent for another his actions are deemed to constitute those of his principal. A sale to an agent in his capacity as agent constitutes a sale to his principal. Accordingly, tangible personal property incorporated into a capital improvement construction project as an integral component part thereof for a non-tax-exempt organization is exempt from tax when sold by a subcontractor to a construction manager acting as the owner's agent. It should be noted that the subcontractor is required to pay the appropriate sales or use tax on its purchase or use of the tangible personal property incorporated into the capital improvement inasmuch as it is the ultimate consumer with respect to such property.

DATED: February 18, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau