

Private Telephone Systems-Real Property Or Tangible Personal Property

In recognition of recent court rulings on the installation of private telephone systems (Matter of Crystal v City of Syracuse and Matter of Crossman Cadillac v Board of Assessors of County of Nassau), the Department of Taxation and Finance has reassessed its position on the application of the sales and use tax on the purchase and installation of such systems.

Previously, the Department held that:

1. private telephone systems which were rented were taxable under section 1105(a) of the Tax Law as the sale of tangible personal property, since the lessor of such a system reserved title to the system in his contract with the lessee. The installation charge, whether separately stated or included in the price, was taxable under section 1105(c)(3) of the Tax Law.
2. private telephone systems which were installed by a vendor on the premises of a purchaser, pursuant to a contract of sale, were considered to be capital improvements and therefore, taxable to the vendor-contractor as the retail purchaser of the materials. No tax was to be collected from the purchaser of the system.

Effective March 1, 1981, the position of the Department is as follows:

Private telephone systems, \*except for those incorporated as part of the real property for the owner of the real property (capital improvements), shall be deemed tangible personal property; and the sale, rental, and installation of these systems, by both utility and private companies, will be subject to the sales tax (sections 1105(a), 1105(b), and 1105(c)(3) of the Tax Law).

\*Private telephone systems shall be deemed capital improvements to real property only when they are installed for the owner of the real property in such a manner as to become an integral part of the realty, so that removal of the system would cause significant structural injury to the realty and/or material damage to the system.

Significant structural injury to realty will have been sustained if the reconstruction necessary to restore the realty to its condition prior to installation of the system qualifies as a capital improvement rather than a repair to real property.

Material damage to an installed private telephone system will have been sustained if, upon removal, such system does not retain more than scrap value and is in such injured condition as to preclude its reinstallation elsewhere.

The following components are examples of parts of a private telephone system:

All Call Unit	Music On Hold (Music Box)
Alternate Point Answering	Music System
Amphanol	Night Switch
Apparatus Cabinet	Prewired Location
Automatic Dialer	Privacy/Privacy Release
Automatic Key Restoration	Pulsar
Cable	Rotary Line
Call Director	Signal (Visible & Audible)
Central Office Line	Soft Touch Adaptation
Central Office Line Card	Speaker
Conference Strap	Speaker Phone
Console	Station
Direct Station Selection Console	Tape
Extension Cord	Telephone Instrument (Wall, Desk)
FM Tuner	Tie Line
Face Plate	Toll Divert Unit
Hardware	Tone Convertor
Hearing Aid Amplifier	Tone Signaling
Intercom Card	Tone to Pulse Unit
Intercom Channel	Touch Tone Pad & Receiver
Intercom Path (Hold & Transfer)	Truck Relay
Key Service Unit	Voice Paging
Listening Device (Monitor)	Wall Cabinet
Multi-Trunk Add-On Conferencing	Wire