

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

TSB-A-81(65)S
Sales Tax
December 23, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810317A

On March 17, 1981 a Petition for Advisory Opinion was received from American Sunsystems, Inc., 158 Cherry Street, Milford, Ct. 06460.

The issues raised are whether sales tax is required to be collected on the receipts from: (1) sales of installed solar hot water heating systems to residential and commercial users who are the owners of the real property upon which the systems are installed; (2) the leasing of installed solar hot water heating systems to residential and commercial users; and (3) sales of solar hot water heating systems, on an uninstalled basis, to the general public.

Section 1105(a) of the Tax Law imposes a tax on receipts from retail sales of tangible personal property. 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 . . ." The Tax Law and the Sales and Use Tax Regulations define the term "capital improvement" as "An addition or alteration to real property which: (i) substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and (ii) 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." Tax Law §1101(b)(9), 20 NYCRR 527.7(a)(3). Section 1101(b)(5) of the Tax Law defines the term "sale" to include a lease.

Classifications of Improvements and Repairs to Real Property for Sales Tax Purposes (Publication 862), published by the New York State Department of Taxation and Finance, categorizes additions to permanent solar systems and the installation or replacement of permanent solar systems as capital improvements to real property.

Accordingly, Petitioner's sales of solar hot water heating systems on an installed basis to residential and commercial users constitute capital improvements to real property, as defined in the Tax Law and the Sales and Use Tax Regulations, and are, therefore, exempt from sales tax. Tax Law §1101(b)(9), 20 NYCRR 527.7(a)(3). In such instances, Petitioner is liable for payment of sales and use tax on purchases and uses of tangible personal property utilized in performing the capital improvements in question. 20 NYCRR 527.7(a)(5). Petitioner's sales of uninstalled solar hot water heating systems to the general public are subject to sales tax pursuant to Section 1105(a) of the Tax Law.

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Petitioner's leases of installed solar hot water heating systems to residential or commercial users do not constitute capital improvements to real property because such leased systems are not intended to be permanently installed. Tax Law §1101(b)(9), 20 NYCRR 527.7(a)(5). Consequently, such leases are subject to sales tax pursuant to Section 1105(a) of the Tax Law.

DATED: December 7, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau