



When you have a sales tax problem, *we are the solution!*

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Capital Improvements

In our monthly newsletter, we usually try to provide updates on recent changes to tax policy or spread the word about new government programs. However, sometimes the most helpful newsletter can be one that hopefully helps to discuss an existing tax issue. One of the biggest areas of disagreement during an audit is often capital improvements.



So what is a capital improvement? In layman's terms, it's construction that is more than just a repair. In technical terms, it's an addition or alteration to real property that:

- substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property;
- 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
- is intended to become a permanent installation.

Given that in New York State it's the Taxpayer's responsibility to prove a job is a capital improvement, not the State's responsibility to prove a job is not a capital improvement, you'd surely like a simple and clear explanation of what qualifies as a capital improvement. However, if the definition doesn't sound simple or as objective as you'd like, you're right.

Like most audit issues, documentation is unparalleled. To document a capital improvement, you should obtain a New York State Form ST-124, *Certificate of Capital Improvement*. It must be properly completed, obtained in a timely fashion and needs to be accepted in good faith. Obviously, you must also keep the certificate in your files.

If you're a contractor, you should also be aware of potential use tax pitfalls. While a capital improvement is exempt from tax, the materials used in the job are taxable. If a vendor fails to charge you sales tax for any reason, you must self-assess use tax. This can be done on your Sales and Use Tax Return.

So if you're dealing with a capital improvement, remember that you must be able to defend your position, document your position and be aware of related tax problems such as use tax. As this is just a summary of the capital improvement rules, which are overly complex and confusing, we always recommend that you discuss your tax questions with a tax professional (us)!



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Assessment Reduced by Over \$1 MILLION!

A client came to us with two assessments, one for sales and use tax and one for petroleum business tax, totaling approximately \$1,100,000. The client was in the business of selling fuel for heating homes and businesses.

Fuel sold to businesses is taxed at a higher rate than fuel sold to personal residences in New York State. After reviewing the auditor's work papers, it was apparent that she had many of the locations misclassified as business instead of residential.

Sales Tax Defense worked with the client to pull information on the various locations to prove that the locations were in fact residential and not business locations. Tax Defense also disputed penalty abatement on the case. After negotiating back and forth and the pulling of pages and pages of supporting documentation, Sales Tax Defense was able to reduce the assessment from approximately \$1,100,000 to approximately \$45,000!! OVER \$1 MILLION DOLLARS!!

About Us

We are a dedicated team of tax professionals who have committed our careers to helping businesses and fellow professionals with tax problems. Since the only work we are focused on is solving tax problems, businesses never have to be concerned that we will try to sell them other services they do not need. And professionals never have to be concerned with us encroaching on their client relationships, because we view you, our fellow professional, as our client.

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