



Certificate of Capital Improvement

After this certificate is completed and signed by both the customer and the contractor performing the capital improvement, it must be kept by the contractor.

Read this form completely before making any entries.

This certificate may not be used to purchase building materials.

Name of customer (print or type)	Name of contractor (print or type)
Street address	Street address
City State ZIP code	City State ZIP code
Certificate of Authority number (if any)	Certificate of Authority number (if any)

To be completed by the customer:

Describe capital improvement to be performed:

Project name
Street address (where the work is to be performed) City State ZIP code

I certify that:

- I am the owner, tenant, of the real property identified on this form, **and**
- The work described above will result in a capital improvement to the real property within the guidelines of this form, **and**
- This contract (check one) includes, does not include, the sale of tangible personal property that, when installed, retains its identity as tangible personal property and does not become a permanent part of the real property.

I understand that:

- I will be responsible for any sales tax, interest, and penalty due on the contractor's total charge for tangible personal property and for labor, if it is determined that this work does not qualify as a capital improvement, **and**
- I will be required to pay the contractor the appropriate sales tax on tangible personal property (and any associated services) transferred to me pursuant to this contract, when the property installed by the contractor does not become a permanent part of the real property; **and**
- I will be subject to civil or criminal penalties (or both) under the Tax Law, if I issue a false or fraudulent certificate.

Signature of customer	Title	Date
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To be completed by the contractor:

I, the contractor, certify that I have entered into a contract to perform the work described by the customer named above. (A copy of the written contract, if any, is attached.)

I understand that my failure to collect tax as a result of accepting an improperly completed certificate will make me personally liable for the tax otherwise due, plus penalties and interest.

Signature of contractor or officer	Title	Date
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This certificate is not valid unless all entries are completed.

Guidelines

If a contractor gets a properly completed (that is, no required entries on the form are left blank) Form ST-124, *Certificate of Capital Improvement*, from the customer within 90 days after rendering services, the customer bears the burden of proving the job or transaction was a capital improvement (that is, was not taxable to the customer).

If a contractor does not get a properly completed *Certificate of Capital Improvement* within 90 days, the contractor bears the burden of proving the work or transaction was a capital improvement. The failure to get a properly completed certificate, however, does not change the taxable status of a transaction; that is, a contractor may still show that the transaction was a capital improvement. If a contractor erects a building for a customer, or performs some other work that constitutes a capital improvement, the contractor must pay tax on the purchase of building materials or other tangible personal property, but is not required to collect tax from the customer for the capital improvement. If the work performed is taxable (such as repair, service, or maintenance), the contractor must collect tax from the customer on the full charge to the customer, including labor and materials.

The contractor must keep any exemption certificate for at least three years after the due date of the last return to which it relates, or the date the return was filed, if later. The contractor must also maintain a method of associating an exempt sale made to a particular customer with the exemption certificate on file for that customer.

When the customer completes this certificate and gives it to the contractor, it is evidence that the work to be performed will result in a capital improvement to real property.

A capital improvement to real property is defined in section 1101 (b)(9) of the Tax Law and Sales Tax Regulation section 527.7(a)(3), as an addition or alteration to real property that:

(a) substantially adds to the value of the real property or appreciably prolongs the useful life of the real property,

and

(b) 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

(c) is intended to become a permanent installation.

The work performed by the contractor must meet all three of these requirements to be considered a capital improvement. This certificate may not be issued unless the work qualifies as a capital improvement.

A contractor, subcontractor, property owner, or tenant, may not use this certificate to purchase building materials or other tangible personal property tax free. A contractor's acceptance of this certificate does not relieve the contractor of the liability for sales tax. A contractor must pay sales tax on the purchase of building materials or other tangible personal property subsequently incorporated into the real property as a capital improvement (see Publication 862, *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, for additional information) unless the contractor can legally issue Form ST-120.1, *Contractor Exempt Purchase Certificate*.

The term *materials* is defined as items that become a physical component part of real or personal property, such as lumber, bricks, or steel (Sales Tax Regulation, section 541.2(ii)).

This term also includes items such as doors, windows, kits, and prefabricated buildings used in construction.

Floor covering

Floor covering such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile, and vinyl tile installed as the initial finished floor covering in (1) new construction, (2) a new addition to an existing building or structure, or (3) in a total reconstruction of an existing building or structure, constitutes a capital improvement regardless of the method of installation. As a capital improvement, the charge to the property owner for the installation of floor covering is **not** subject to New York State and local sales and use taxes. However, the retail purchase of floor covering (such as carpet or padding) itself is subject to tax.

Floor covering installed other than as described in the preceding paragraph does not qualify as a capital improvement, even though it meets the criteria stated in (a), (b), and (c). Therefore, the charge for materials and labor is subject to the sales tax, regardless of the manner in which the covering is installed (see Publication 864.1, *Floor Coverings and the Sales Tax Law*, for additional information), but the contractor may apply for a credit or refund of any sales tax already paid on the materials.

The term *floor covering* does **not** include flooring such as ceramic tile, hardwood, slate, terrazzo, and marble. Thus, the rules for determining when floor covering constitutes a capital improvement do not apply to such flooring. Rather, the criteria stated in (a), (b), and (c) above apply to the flooring.

For guidance as to whether a job is a repair or a capital improvement, refer to Publication 862, *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*.

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