

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(4)S
Sales Tax
January 28, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S991013A

On October 13, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from State University of New York at Stony Brook, Nicholls Road, Stony Brook, New York 11794-1151.

The issue raised by Petitioner, State University of New York at Stony Brook, is whether sales tax should be imposed upon the vehicle registration fee collected from students, staff and faculty of Petitioner.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner has been including vehicle registration fees collected from students, staff and faculty as part of its sales tax calculation on parking fees. The vehicle registration fee is \$5.00. Petitioner states that the vehicle registration fee is not a parking permit fee and is not for parking privileges. However, a copy of "Parking Permit Rules and Regulations" submitted by Petitioner makes numerous references to the fact that the \$5.00 fee is paid to obtain a "parking permit." The reference to the term "parking permit" is prevalent throughout these parking rules and regulations. In addition to the registration fee, upgraded parking privileges such as a space in a parking garage or a specially designated parking space in a lot, may be purchased. The price for the upgraded parking privileges is \$100 to \$250.00 per year. Petitioner requires that vehicles be registered so it may identify and, if necessary, contact the operator for the purpose of reporting damage to vehicles, lights left on, leaking gas, etc.

Revenue from the vehicle registration fees collected is used to pay for staff to input data collected concerning the description of the vehicle, the location of the vehicle owner and to maintain the computer system.

Applicable Law and Regulations

Section 1101(b)(3) of the Tax Law, in defining the term "receipts" for purposes of the sales tax sets forth, in pertinent part, that receipt means "...the sale price of any property and the charge for any service taxable under this article..."

Section 1105 of the Tax Law provides, in part:

Section 1105. Imposition of sales tax.—... there is hereby imposed and shall be paid a tax ... upon:

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(6) Providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles provided, however, this paragraph shall not apply to such facilities owned and operated by a public corporation, as defined by section sixty-six of the general construction law, other than a public benefit corporation, as defined by such section sixty-six, created by interstate compact or at least half of whose members are appointed by the governor, or any agency or instrumentality of a municipal corporation or district corporation as defined by such section sixty-six...

Section 1116 of the Tax Law provides, in part:

Exempt organizations..-(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed by this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons....

Section 527.1(b) of the Sales and Use Tax Regulations provides:

Taxable and exempt items sold as a single unit. When tangible personal property, composed of taxable and exempt items is sold as a single unit, the tax shall be collected on the total price.

Example: A vendor sells a package containing assorted cheeses, a cheese board and a knife for \$15. He is required to collect tax on \$15.

Section 66 of the General Construction Law provides, in part:

1. A “public corporation” includes a municipal corporation, a district corporation, or a public benefit corporation.

2. A “municipal corporation” includes a county, city, town, village and school district.

3. A “district corporation” includes any territorial division of the state, other than a municipal corporation, heretofore established by law which possesses the power to contract indebtedness and levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments, whether or not such territorial division is expressly declared to be a body corporate and politic by the statute creating or authorizing the creation of such territorial division.

4. A “public benefit corporation” is a corporation organized to construct or operate a public improvement wholly or partly within the state, the profits from which inure to the benefit of this or other states, or the people thereof.

* * *

6. An “education corporation” is a corporation as defined in subdivision one of section two hundred sixteen-a of the education law.

Section 216-a of the Education Law provides, in pertinent part:

1. The term “education corporation” as used in this section means a corporation (a) chartered or incorporated by the regents or otherwise formed under this chapter, or (b) formed by a special act of this state with its principal purpose an education purpose and which is a member of the university of the state of New York,...

Section 352.1 of the Education Law provides:

There is hereby created in the state education department and within the university of the state of New York as established under the board of regents a corporation to known as the state university of New York which shall be responsible for the planning, supervision and administration of facilities and programs in accordance with the plan proposed by the state university trustees as approved by the regents pursuant to section two hundred thirty-seven of this chapter. The state university shall provide for higher education supported in whole or in part with state moneys in accordance with the provisions of section three hundred fifty-eight hereof, and shall perform such other duties as may be entrusted to it by the provisions of this

article and any other law. Subject to the terms of any agreement to which it is a party, such corporation shall have the care, custody, control and management of the lands, grounds, buildings, facilities and equipment used for the purposes of the state-operated institutions of the state university, and it shall have power to protect, preserve and improve the same.

Part 584 of 8 NYCRR contains the regulations of the State University at Stony Brook governing the use of motor vehicles on the campus of Petitioner (Petitioner's traffic and parking regulations). Section 584.1(a) of these regulations provides, in part:

(a) *General.* Pursuant to Education Law, section 360, State University of New York is authorized to regulate traffic and parking on the Stony Brook campus. The State University of New York at Stony Brook provides roads and parking lots to make university business easier to conduct. Methods of registering vehicles and regulations governing their use on campus are stated below. The university does not assume any liability for damage to or loss of private vehicles, their occupants or contents. Parking of vehicles on campus without campus registration, or without permission from the university, or in violation of regulations, is not allowed. Drivers who need vehicles on campus in order to conduct university-related business may obtain parking permits either at the parking services office or through the offices they are to visit. Temporary permits are governed by the regulations stated on the permits.

* * *

(3) Registration. (i) Faculty, staff, students and authorized nonstate employees may register a car for campus use in accordance with the procedures outlined below, and upon payment of an appropriate registration fee as approved by the chancellor or designee....

Section 584.1(b) of such regulations provides, in part:

Eligibility. An owner/operator with an unpaid fine or towing fee will not be permitted to register a motor vehicle for on-campus parking until the indebtedness is satisfied.

(1) Resident students. Resident students, except freshmen and sophomores, are eligible to register their motor vehicles for the residence lots. Students are cautioned that eligibility does not guarantee that a permit will be issued....Students are cautioned that the issuance of a permit does not guarantee a parking space.

(2) Commuter students. All commuter students are eligible to register their motor vehicles for the commuter lots....

* * *

(3) Faculty and staff. Faculty and staff members are eligible to register their motor vehicles for the faculty/staff lots. Faculty and staff are cautioned that eligibility does not guarantee a parking space. Registered faculty and staff members may park their registered vehicles in any of the faculty/staff lots.

Section 584.2(a) of such regulations provides, in part:

Registration. (1) Who must register. Persons associated with the university, and who park on university property must register their vehicles with the university. Vehicle registration entitles them to park only in designated parking lots if a space is available.

* * *

(3) Permits. One permit will be issued when a vehicle is registered. The permit must be removed if association with the university is terminated or the vehicle sold. Vehicles are considered registered only when the issued permit is displayed as required....

Section 584.2(b)(2)(ii) of such regulations provides as follows:

Parking in faculty/staff lots is restricted to holders of faculty/staff permits from 8 a.m. to 4 p.m., Monday through Friday. After 4 p.m. and until 8 a.m. any registered car may be parked in these lots. Residence parking lots are restricted to holders of resident permits from 1 a.m. to 4 p.m. on weekdays....

Opinion

Petitioner is part of the State University of New York, a corporation created in the State Education Department and within the University of the State of New York, under the Board of Regents (Education Law, Section 352.1). The governing board of Trustees is empowered to adopt and enforce campus rules relating to parking, vehicular and pedestrian traffic, and safety; including provisions for the payment of fees for the registration or parking of vehicles (Education Law, Section 360.1(c)).

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According to the above cited sections of Petitioner's traffic and parking regulations, when a person pays to register his or her vehicle with Petitioner, such person is also paying for the privilege of parking on the campus of Petitioner. This is evidenced by the fact that a single fee is paid to register a motor vehicle with Petitioner which results in a permit being issued to the owner of the vehicle which, when properly displayed, confers the right to park in a designated general area on the premises of Petitioner. The facts of this Petition, as well as Petitioner's traffic and parking regulations, do not provide for two separate and distinct fees charged for registration and parking, or for separate permits issued for registration and parking, as in the case of State University of New York at Binghamton, Adv Op Comm T&F, February 2, 1998, TSB-A-98(5)S.

Petitioner is an exempt government entity under Section 1116(a)(1) of the Tax Law. Petitioner's sales, however, of tangible personal property or services of a kind ordinarily sold by private persons are subject to sales tax. Petitioner's parking services are of a kind ordinarily sold by private persons, and are subject to tax under Section 1105(c)(6) of the Tax Law. Petitioner appears to be an education corporation under Section 216-a of the Education Law. Accordingly, the exception from the imposition of the sales tax for public, municipal or district corporations, or agencies and instrumentalities thereof, as provided in Section 1105(c)(6) does not apply to Petitioner.

Therefore, since Petitioner charges a single fee to cover the vehicle registration and for the privilege of parking on its premises, such vehicle registration fee is subject to sales tax under Section 1105(c)(6) of the Tax Law. See Section 527.1(b) of the Sales and Use Tax Regulations.

DATED: January 28, 2000

/s/
John W. Bartlett
Deputy Director
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.