

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

TSB-A-02(15)S
Sales Tax
June 25, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000914B

On September 14, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Ramada Inn Syracuse, 1305 Buckley Road, N. Syracuse, NY 13212.

The issue raised by Petitioner, Ramada Inn Syracuse, is whether an American Express credit card issued to a New York State governmental employee embossed with the words “tax exempt” is sufficient, in and of itself, to relieve Petitioner from responsibility for collecting State and local sales taxes from the employee.

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

Petitioner operates a hotel in New York State. Periodically, employees of the State of New York, who are on official business for the State, stay at the hotel. The employees of the State of New York have been issued “American Express” credit cards for use in making authorized purchases in the course of their official duties while on official business. The cards are issued in the employee’s name and may be embossed with the words “tax exempt.” When the credit cards are swiped through the card reader, cash register, etc., the receipt printed is solely in the employee’s name and makes no mention that the State of New York, or a representative or employee of the State of New York on official business, is paying for the hotel occupancy.

Applicable Law and Regulations

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 under 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 1132(c)(1) of the Tax Law provides, in part:

For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property

or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five, all rents for occupancy of the type mentioned in subdivision (e) of said section, and all amusement charges of any type mentioned in subdivision (f) of said section, are subject to tax until the contrary is established, and the burden of proving that any receipt, amusement charge or rent is not taxable hereunder shall be upon the person required to collect tax or the customer. Except as provided in subdivision (h) or (k) of this section, unless . . . the purchaser, not later than ninety days after delivery of the property or the rendition of the service, furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the commissioner may require demonstrating that the purchaser is an exempt organization described in section eleven hundred sixteen, the sale shall be deemed a taxable sale at retail. . . Where such a resale or exemption certificate or such an affidavit, statement or additional evidence has been furnished to the vendor, the burden of proving that the receipt, amusement charge or rent is not taxable hereunder shall be solely upon the customer. . . .

Section 529.2(b) of the Sales and Use Tax Regulations provides, in part:

As purchaser. (1) New York State, or any of its agencies, instrumentalities, public corporations or political subdivisions (hereinafter referred to as New York State governmental entities) are not subject to sales or use tax when they are the purchaser, user, or consumer of tangible personal property or services or when they are the occupant of a hotel room or a patron at a place of amusement, club, roof garden, cabaret or other similar places.

(2) New York State governmental entities as purchasers, users, consumers, occupants or patrons must exercise their right to exemption through the issuance of governmental purchase orders or the appropriate exemption document.

Section 532.4(b) of the Sales and Use Tax Regulations provides, in part:

(1) The burden of proving that any receipt, amusement charge, or rent is not taxable shall be upon the person required to collect the tax and the customer.

(2) A vendor who in good faith accepts from a purchaser a properly completed exemption certificate, or as authorized by the Department, other documentation evidencing exemption from tax not later than 90 days after delivery of the property or the rendition of the service is relieved of liability for failure to collect the sales tax with respect to that transaction. The timely receipt of the certificate or documentation itself will satisfy the vendor's burden of proving the nontaxability of the transaction and relieve the vendor of responsibility for collecting tax from the customer.

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Petitioner is providing hotel occupancy to employees of the State of New York who are engaged in official business for the State. The employees are paying for their occupancy using credit cards embossed with the words "tax exempt." When the credit cards are swiped through the card reader, cash register, etc., the receipt printed is solely in the employee's name. Thus, the record of the transaction retained by the hotel makes no mention that the State of New York is paying for the hotel occupancy or that a State employee is paying for the occupancy in the course of his or her official duties.

Pursuant to Section 529.2(b)(1) of the Sales and Use Tax Regulations, the State of New York is not subject to State and local sales taxes when it is the occupant of a hotel room. This would include a State employee, on official business for the State. Petitioner must maintain records to substantiate the exempt occupancy. Pursuant to Section 529.2(b)(2) of the Sales and Use Tax Regulations, New York State governmental entities as purchasers, users, consumers, occupants or patrons exercise their right to exemption through the issuance of governmental purchase orders or the use of appropriate exemption documentation. Though the credit card issued to the State employee may be embossed with the words "tax exempt," the record generated by swiping the card through a card reader or cash register does not substantiate that the hotel occupancy was paid for by the State or by a State employee in the course of his or her official duties. Accordingly, the use of this credit card by State employees is not sufficient, in and of itself, to relieve Petitioner of its burden of proving the nontaxability of the transaction or its responsibility for collecting sales tax on the transaction.

State employees should give Petitioner a properly completed Exemption Certificate, Tax on occupancy of hotel rooms, Form ST-129 (10/00), when paying for hotel occupancy. Form ST-129 certifies that the person signing the form is a government employee or representative acting in the course of his or her official duties and that such person's hotel occupancy is paid for directly or indirectly (including reimbursement) by the government. Thus, if Petitioner receives a properly completed Form ST-129 from a State employee, regardless of the method of payment, Petitioner will have satisfied its burden of proving the nontaxability of the transaction and will not have to collect tax. See Section 532.4(b) of the Sales and Use Tax Regulations.

DATED: June 25, 2002

/s/
Jonathan Pessen
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Technical Services Division

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