

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-15(21)S
Sales Tax
May 26, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140414A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether its “set-up fee” for a public room would cause the receipts for the rental of the public room itself to be subject to sales tax.

We conclude that the set-up fee is part of the rent for the public room and is taxable if the room rental is taxable.

Facts

Petitioner is a hotel operator that rents “public rooms” at its facility to customers. Public rooms are used for banquets, meetings, training seminars and religious services. The public room rental includes furniture, such as chairs, tables and podium, although a customer may rent the public room without furniture. Furthermore, Petitioner states that it does not collect sales tax on the public room rental unless it provides catering services in conjunction with the room rental. Petitioner charges an additional 20% set-up fee, sometimes referred to as a service charge, for the public room rental, with or without furniture and whether or not catering service is provided. Petitioner collects tax on the entire 20% set-up fee. The set-up fee is separately stated on the invoice provided to the customer.

Analysis

Tax Law § 1105(c) imposes tax on the receipts from every sale, except for resale, of certain enumerated services, including the services of installing, or maintaining, servicing or repairing tangible personal property. See Tax Law § 1105(c)(3). The term “installing” includes “setting up tangible personal property or putting it in place for use.” See 20 NYCRR § 527.5(a)(2). Despite referring to it as a “set-up” fee, Petitioner charges the fee whether or not any furniture is provided. Accordingly, we conclude that Petitioner’s set-up fee is not a receipt for services to tangible personal property because the fee is not dependent on Petitioner setting up any tangible personal property or putting it in place for use.

Furthermore, because the set-up fee is charged on all public room rentals, regardless of whether furniture or other services, such as catering, are provided, we conclude that the set-up fee is part of the rent for the public room. Therefore, the fee is taxable, whether or not separately stated, if the rent for the public room is taxable.

Generally, the rental of a meeting room or rooms in a hotel by itself will not be subject to sales tax if the meeting room constitutes a place of assembly. *See* Publication 848, *A Guide to Sales Tax for Hotel and Motel Operators*; TB-ST-331 *Hotel and Motel Occupancy*. A “place of assembly” is “[a] room or suite of rooms containing no sleeping accommodations and intended to be occupied and used by persons for purposes other than sleeping and living quarters, such as education, recreation, amusement or business or religious meetings.” Rental of a “place of assembly” in conjunction with the sale of food or drink is subject to sales tax. *See* 20 NYCRR § 527.9(e)(1).

When Petitioner rents a public room without the provision of food or drink, the rent for the public room, including the set-up fee, is not subject to sales tax. If Petitioner provides only incidental snacks during breaks (e.g., coffee, tea, cookies) and the charge for those snacks are separately stated and reasonable, only the charge for the snacks will be subject to tax. *See* 20 NYCRR § 527.9(h)(4). However, when Petitioner provides catering services with the public room, the rent for the room and the set-up fee are subject to sales tax, regardless of whether they are separately stated. *See* 20 NYCRR § 527.9(e)(1).

DATED: May 26, 2015

/S/

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