

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks (1) whether the receipts for its sightseeing cycleboat tours are subject to State or local sales taxes; and (2) whether its purchases of cycleboats, and the fuel, supplies, maintenance and repairs services required to operate the cycleboats are subject to State or local sales taxes. We conclude that Petitioner’s receipts from its sightseeing cycleboat tours are not subject to New York State or local sales taxes. However, the purchases of the cycleboats, the fuel and supplies required to operate the cycleboats and the services of maintaining and repairing the cycleboats, are subject to State and local sales taxes.

Facts

Petitioner provides cycleboat (“boat”) sightseeing tours. Passengers may purchase individual tickets or book the entire boat for a group tour at a specific date, time and location. Petitioner provides the driver and tour host. Each boat has ten seats for pedaling passengers and a bench that seats an additional five passengers, and is equipped with a gas motor that provides additional power as needed.

Only individuals who purchased tickets in advance of the initial departure are allowed on the boat. Each tour lasts approximately one hour and forty-five minutes. The tour host welcomes passengers on board and reviews safety instructions, processes paperwork and waivers, explains the route, points out locations of interest, answers questions, and acts as a liaison between passengers and the driver. The boat travels to local sites, breweries and restaurants in the downtown area of the city in which the Petitioner is based. Passengers are allowed to disembark at each location where the boat docks. Passengers are not allowed to change the duration of the tour and the itinerary is relatively fixed once the tour has started. No food or drink is sold or served on the boat, although passengers are allowed to bring food and drink with them on the boat. Petitioner’s boats are each equipped with a countertop to accommodate passengers’ belongings. Petitioner does not have a liquor license and does not contract with a caterer to provide food or drink on the tour.

Analysis

Petitioner provides what it characterizes as sightseeing tours of local sites, breweries and restaurants with a tour host who points out locations of interest and answers questions. Petitioner asks whether it should charge state and/or local sales tax on its receipts for its sightseeing cycleboat tours. Tax Law § 1105 imposes sales tax on receipts from the sale of tangible personal

property and from certain enumerated services. Tax Law §§ 1105(a)(c). Tour services are not among the services taxable under Tax Law § 1105(c). Therefore, Petitioner's receipts from the sale of tickets for its sightseeing tours are not subject to New York State or local sales tax. *See* TSB-A-15(30)S.

Petitioner also asks whether it must pay state and/or local sales tax on its purchases of the cycleboats and on the purchases of fuel, supplies, maintenance and repairs required to operate the cycleboats. Tax Law § 1105(a) imposes sales tax upon the receipts from "every retail sale of tangible personal property. . . ." Tax Law § 1132(c)(1) sets forth a presumption that all receipts for tangible personal property are subject to tax "until the contrary is established," and places the burden of proving the contrary upon the vendor or its customer. *See* 20 NYCRR 532.4[a][1]; [b][[1]. Tax Law § 1115(a)(8) provides an exemption from sales and use tax for receipts of "[c]ommercial vessels primarily engaged in interstate or foreign commerce and property used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs (other than articles purchased for the original equipping of a new ship)." To qualify, a commercial vessel must be primarily engaged in interstate or foreign commerce. In this context, interstate or foreign commerce means the transportation of persons or property between states or countries. 20 NYCCR 528.9(a)(5). Petitioner states that the cycleboats travel to local sites. As Petitioner's cycleboats do not transport persons or property between states and/or countries, Petitioner's cycleboats are not considered commercial vessels eligible for the tax exemption. Therefore, Petitioner must pay the New York State and local sales tax on the purchases of the cycleboats. Similarly, Petitioner must pay the New York State and local sales tax due on the purchases of fuel, provisions, supplies, maintenance and repairs required to operate the cycleboats.

DATED: November 10, 2020

/S/

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.