

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-97(57)S  
Sales Tax

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S970529A

On May 29, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from KPMG Peat Marwick, LLP, 100 North Tampa Street, Suite 2400, Tampa, Florida 33602-5121.

The issue raised by Petitioner, KPMG Peat Marwick, LLP, is whether the charges to its client for passenger car rental booking fees are subject to New York State sales and use tax.

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

Petitioner's client, domiciled outside the United States, does business as a travel agent selling "tour packages" to foreign citizens vacationing in New York. The tour packages provide Petitioner's client's customers, under one lump sum charged, with the airline tickets, hotel accommodations, bus service, passenger car rental and other miscellaneous items commonly included in a vacation package. Petitioner's client pays tax on the purchase price of all taxable components of any tour packages sold.

To provide better service to its customers, a large rental car company in New York (the "Lessor") recently established a separate legal entity that operates as a booking agent for the Lessor. The booking agent maintains books and records with respect to its own activities separate and apart from the Lessor's books and records. This booking agent assists Petitioner's client by providing information on available passenger car rental discounts that arise either from renting a large number of passenger cars (quantity discounts) or from renting the cars during off-peak times of the year. Ordinarily, the booking agent, on behalf of Petitioner's client, negotiates a "package deal" with the Lessor at a reduced rental rate, thus saving Petitioner's client money. The booking agent's normal booking fee is approximately 20 percent of the amount paid to the Lessor by Petitioner's client for the passenger car rental and in no circumstances is the booking fee greater than 25 percent of the amount paid to the Lessor by Petitioner's client. Besides providing a booking service for the Lessor, the booking agent also provides travel brochures and travel guides highlighting areas of interest within a short driving distance. These travel brochures and travel guides are provided to Petitioner's client at no charge.

The following scenario illustrates the aforementioned transaction when Petitioner's client (on behalf of its customers) rents passenger cars from the Lessor and the transaction is negotiated by the booking agent:

After the booking agent negotiates a price per week on behalf of the Lessor with Petitioner's client, Petitioner's client rents passenger cars from the Lessor for \$80 per car per week plus applicable tax. Petitioner's client pays the negotiated amount directly to the Lessor. The booking agent then separately invoices Petitioner's client an additional \$20 per car for booking services charged for negotiating the transaction.

The booking service is a valuable service performed by the booking agent for Petitioner's client and the Lessor. Petitioner's client is thereby able to obtain reduced rates and the Lessor is able to rent a greater number of cars. The booking fee is not a mandatory fee required by the Lessor. Petitioner's client can avoid this fee by choosing not to use the booking agent to negotiate passenger car rentals. However, the total combined amount charged by the Lessor and the booking agent, upon utilizing the booking agent's services to negotiate the transaction, is usually less than the normal weekly rental rate charged by the Lessor.

#### Applicable Law

Section 1105(a) of the Tax Law imposes sales tax on the receipts from sales of tangible personal property.

Section 1101(b)(3) of the Tax Law defines "receipt" as follows:

Receipt. The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery is provided by such vendor or a third party, but excluding any credit for tangible personal property accepted in part payment and intended for resale. For special rules governing computation of receipts, see section eleven hundred eleven.

Section 1101(b)(5) of the Tax Law defines the terms "sale, selling or purchase," in part, to mean:

Any transfer of title or possession or both, exchange or barter, **rental, lease** or license to use or consume . . . for a consideration, or any agreement therefore, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor (emphasis added).

Section 1101(b)(8)(i) of the Tax Law defines the term "vendor," in part, as:

(A) A person making sales of tangible personal property or services, the receipts from which are taxed by this article . . .

Section 1101(b)(8)(ii)(A) of the Tax Law provides, in part:

. . . when in the opinion of the commissioner of taxation and finance it is necessary for the efficient administration of this article to treat any salesman, representative, peddler or canvasser as the agent of the vendor, distributor, supervisor or employer under whom he operates or from whom he obtains tangible personal property sold by him, or for whom he solicits business, the commissioner of taxation and finance may, in his discretion, treat such agent as the vendor jointly responsible with his principal, distributor, supervisor or employer for the collection and payment over of the tax.

Section 1160 of the Tax Law provides, in part:

(a)(1) On and after June first, nineteen hundred ninety, in addition to any tax imposed under any other article of this chapter, there is hereby imposed and there shall be paid a tax of five percent upon the receipts from every rental of a passenger car which is a retail sale of such passenger car.

\* \* \*

(b) For purposes of this section, the following definitions shall apply:

(1) Motor vehicle. A motor vehicle as defined in section one hundred twenty-five of the vehicle and traffic law, but not including a motorcycle.

(2) Passenger car. A motor vehicle having a gross vehicle weight of nine thousand pounds or less with a seating capacity of nine persons or less designed for passenger transportation.

(3) Rental. The transfer of possession of a motor vehicle, whether or not the motor vehicle is required to be or is registered by this state, for a consideration, without the transfer of the ownership of such motor vehicle, but not including a lease described in subdivision (i) of section eleven hundred eleven of this chapter [relating to certain long-term leases].

Section 1165 of the Tax Law provides, in part:

The tax imposed by section eleven hundred sixty of this article shall be administered and collected in a like manner as and jointly with the taxes imposed by sections eleven hundred five and eleven hundred ten of article twenty-eight of this chapter.

Opinion

A vendor's receipts from the rental of an automobile are subject to State and local sales and compensating use taxes pursuant to Sections 1105, 1101(b)(5) and 1110 of the Tax Law since that rental constitutes the retail sale of tangible personal property. Also, Section 1160 of the Tax Law imposes a special tax on short term passenger car rentals (less than one year) at a rate of 5% of the rental receipts and all taxable charges incidental to the rental (see Alamo Rent A Car, Inc., Adv Op Comm T&F, April 15, 1991, TSB-A-91(33)S.)

In its business as a travel agent, Petitioner's client may utilize the services of a booking agent to negotiate reduced rate passenger car rentals. The booking agent was created by the Lessor, the rental car company, to operate on behalf of the Lessor. Petitioner's client enlists the services of the booking agent to negotiate a price for Petitioner's client for the rental of passenger cars from the Lessor. In operating on behalf of the Lessor, the booking agent is holding itself out as having passenger cars available for rental. The booking agent receives a fee from Petitioner's client which is a percentage of the consideration the booking agent negotiates for the passenger car rental. Such activities render the booking agent a co-vendor of the rental cars with the Lessor within the meaning and intent of Section 1101(b)(8)(ii)(A) of the Tax Law (see Matter of Alan Drey Company, Inc. v. State Tax Commission, 67 AD 2d 1055). As such, they are jointly liable for the taxes due on receipts from the rental of passenger cars to Petitioner's client. See Section 526.10(e)(2) of the Sales and Use Tax Regulations.

In addition to the fee billed by the booking agent, Petitioner's client is charged and billed separately by the Lessor for the rental of the car. However, Petitioner's client's customers (i.e. the purchasers of the package) cannot rent and operate a vehicle leased through the booking agent without the booking agent's fee and the Lessor's rental charge being paid. Thus, the amount subject to tax in this case is the entire passenger car rental charge to Petitioner's client, consisting of the Lessor's charge, as well as the booking fee charged by the booking agent (see Buffalo Refining Associates, Adv Op Comm T&F, October 29, 1981, TSB-A-81(52)S, Matter of Alan Drey Company, Inc. v State Tax Commission, supra). The fact that these charges are separately invoiced and billed to Petitioner's client is immaterial; the fee required by the booking agency is considered part of the total receipts for the retail rental of the passenger car. Accordingly, in those instances where a fee, commission or service charge is part of the charge for a passenger car rental, the total amount upon which Petitioner's client must pay both sales tax and the special tax of five percent imposed upon the receipts from every short term rental of a passenger car includes both the Lessor's charge and the booking agency fee.

TSB-A-97(57)S  
Sales Tax

It should be noted that in an analogous situation involving a booking agent or registry for bed and breakfasts which charges a fee for arranging occupancy by guests, the agent's fee is considered part of the taxable rent for occupancy in the hotel. See TSB-M-92(7)S, dated December 7, 1992, entitled Providers of Bed and Breakfast Services Required to Collect Sales Tax.

DATED: September 3, 1997

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

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