

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

TSB-A-99(6)S  
Sales Tax  
January 28, 1999

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980504A

On May 4, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Henry Goldwasser, CPA, M.R. Weiser and Co., LLP, 135 West 50<sup>th</sup> Street, New York, New York, 10020.

The issues raised by Petitioner, Henry Goldwasser, CPA, are whether the transactions described below are subject to sales tax.

Petitioner submits the facts in three scenarios below as the basis for this Advisory Opinion.

In all scenarios the services are performed at the taxpayer's New York City offices.

Scenario 1

Company A performs a service of designing a specific event package to meet the request of a client. The client may or may not be located in New York City or State. The package, as designed by Company A, includes tickets to a sporting event and some merchandise (hats, T-shirts, etc.). In most instances the sporting events are held outside of New York State, however it is possible that an event is held in New York State. The tickets are purchased by Company A either from the box office or through a ticket broker. The merchandise is purchased by Company A separately and exclusively for each event. Company A does not maintain its own inventory. Other items that may be added to a package are the use of limousines, hotel rooms, invitations or tickets to pre-event parties and sports memorabilia. Reservations for hotel rooms and limousines are made in the customer's name. Company A does not claim a resale exemption on any of the merchandise or services it purchases and pays sales tax to the vendor when required. Company A charges the client one prearranged price for the entire package.

Questions

1. Whether any portion of a charge for the service of event planning is subject to sales tax.
2. Whether a resale exemption may be claimed when purchasing tickets or merchandise used in providing the event planning service.

Scenario 2

Company A contracts with a client to provide the services of a sports personality either to give a speech or make an appearance. The location of the appearance may be either in or out of New York City or State. An example of making an appearance might be signing autographs in a supermarket. Company A pays the personality a prearranged fee for the appearance and pays for any expenses, such as advertising, associated with the appearance. The client is billed one prearranged price for the appearance.

Question

1. Whether fees charged by Company A to its clients for arranging the appearance of a sports personality in New York City or State are subject to state or local sales tax.

Scenario 3

Company A makes an agreement with a private sports facility, private health club or a school sports facility to provide a corporate sponsor. The facility may be located either in or out of New York City or State. The corporate sponsor will place advertising throughout the facility and pay the facility an annual fee directly. The facility pays Company A a percentage of the fee as a commission.

Question

1. Whether commissions received for the service of providing a corporate sponsor are subject to sales tax.

**Applicable Law**

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

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

\* \* \*

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to

tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of section eleven hundred five....

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax--On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

\* \* \*

(e) The rent for every occupancy of a room or rooms in a hotel in this state, except that the tax shall not be imposed upon (1) a permanent resident, or (2) where the rent is not more than at the rate of two dollars per day.

\* \* \*

(f)(1) Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state, except charges for admission to race tracks, boxing, sparring or wrestling matches or exhibitions which charges are taxed under any other law of this state, or dramatic or musical arts performances, or live circus performances, or motion picture theaters, and except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools. For any person having the permanent use or possession of a box or seat or a lease or a license, other than a season ticket, for the use of a box or seat at a place of amusement, the tax shall be upon the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by the holder, licensee or lessee, and shall be paid by the holder, licensee or lessee.

## **Opinion**

### **Scenario 1**

Company A provides a service of event planning for its clients. Company A makes all the arrangements for a sporting event, including tickets, hats, T-shirts, hotel rooms, limousines, sports memorabilia and invitations to pre-event parties for its clients. Section 1105(a) of the Tax Law imposes a tax on the receipts from retail sales of tangible personal property. Section 1101(b)(4)(i) of the Tax Law defines the term "retail sale" as the sale of tangible personal property to any person

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for any purpose other than for resale as such or for use in performing services taxable under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of Section 1105 of the Tax Law. Company A is providing a service which is not one of the specifically enumerated services subject to sales tax under Section 1105(c) of the Tax Law. Company A's purchases for use in providing this service, such as tickets, T-shirts, sports memorabilia, etc. are not purchases for resale, but rather are used or consumed in providing the service of event planning. As such, these purchases are subject to tax when purchased by Company A, and Company A should pay sales tax to its suppliers of any taxable items. Company A's total charge to its customers for the event planning service including merchandise, tickets and all other items included in the service package is not subject to sales tax. (See UM Enterprises, Adv Op Comm T & F, March 24, 1998, TSB-A-98(21)S).

This conclusion represents the current position of the Department. To the extent Outdoor Pursuits, Adv Op Comm T&F , July 30, 1985, TSB-A-85(33)S or any other advice from the Department suggests a contrary conclusion, it does not represent current policy.

#### Scenario 2

The service of arranging an appearance of a sports personality is not one of the specifically enumerated services subject to tax under Section 1105(c) of the Tax Law. Therefore, fees paid to Company A for arranging a personal appearance or a speech of a sports personality are not subject to state or local sales tax regardless of whether the appearance takes place in or out of New York.

#### Scenario 3

The service solely of providing a corporate sponsor for a sports facility or a health club is not one of the specifically enumerated services subject to sales tax under Section 1105 (c) of the Tax Law. Therefore, commissions paid by a facility or health club to Company A solely for providing a corporate sponsor are not subject to sales tax.

DATED: January 28, 1999

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

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