

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-08(5)S
Sales Tax
January 22, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S061127B

On November 27, 2006, the Department of Taxation and Finance received a Petition for Advisory Opinion from Airport Parking Management, Inc., P. O. Box 271835, West Hartford, Connecticut 06127.

The issue raised by Petitioner, Airport Parking Management, Inc., is whether certain proposed charges for transportation of customers to and from Petitioner's parking facility and Albany International Airport constitute separate charges for nontaxable transportation service.

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

Petitioner's business is located near Albany International Airport (the "Airport"). Petitioner provides parking and transportation services to its customers. The categories of service include, but are not limited to:

(1) providing parking for travelers who use the Airport and providing transportation from Petitioner's facility to the Airport and back.

(2) providing transportation to and from the Airport for travelers who are staying in local hotels and motels and who do not need parking services; and

(3) providing shuttle transportation services for shopping mall employees at area shopping malls (but not to and from the Airport) during the holiday season, without providing parking services for them.

Customers who purchase Petitioner's parking services in category (1) are provided with parking facilities during the time that those customers are away on travel. Petitioner also provides these customers with transportation to and from the nearby Airport. Neither parking nor transportation is independently offered for sale by Petitioner to these customers.

Petitioner proposes to charge its customers in category (1) based upon an allocation of 25% of its charges for parking and 75% of its charges for transportation. Petitioner proposes to collect sales tax on the charges allocated to parking but not on the charges allocated to transportation.

The category (2) services, providing transportation to and from the Airport without parking for travelers who are staying in local hotels and motels and, thus, do not need parking services, are charged to the hotel or motel directly on a monthly basis and not to any individual on a per occurrence basis. The category (3) services, providing shuttle transportation services without the provision of parking services to employees at area shopping malls during the holiday

season, are charged to the shopping malls directly on a monthly basis and not to any individual on a per occurrence basis.

Only the charges made on a per transaction basis to customers who are provided parking, as described in the category (1) services, are at issue in this Advisory Opinion.

Applicable law and regulations

Section 1101(b)(3) of the Tax Law provides, in part:

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. . . .

Section 1105(c) of the Tax Law imposes the sales tax upon receipts from the sales, except sales for resale, of certain enumerated services.

Section 1105(c)(6) of the Tax Law provides, in part, for the imposition of sales tax on parking as follows:

Providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles provided, however, this paragraph shall not apply to such facilities owned and operated by a public corporation, as defined by section sixty-six of the general construction law, other than a public benefit corporation, as defined by such section sixty-six, created by interstate compact or at least half of whose members are appointed by the governor, or any agency or instrumentality of a municipal corporation or district corporation as defined by such section sixty-six. . . .

Section 526.5(a) of the Sales and Use Tax Regulations provides, in part:

Definition. The word *receipt* means the amount of the sale price of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, whether received in money or otherwise

Opinion

Petitioner is a vendor of the service of providing parking or garaging of motor vehicles. Such service is subject to sales tax under section 1105(c)(6) of the Tax Law. Petitioner's parking facility provides parking service to customers of Albany International Airport (the "Airport") during the time that those customers are traveling. Petitioner also provides those customers with transportation to and from the nearby Airport. Transportation services are not included among the enumerated services subject to sales tax under section 1105(c) of the Tax Law. However, such customers in the present case have no reason to avail themselves of Petitioner's transportation if they are not utilizing Petitioner's parking facility. In addition, Petitioner has not indicated that it ever charges its customers solely for parking services without including transportation to and from the Airport. Therefore, Petitioner's charge for parking and shuttle service to customers who use Petitioner's parking facility is a charge for the integrated service of parking or garaging motor vehicles and shuttling its customers to the Airport and back.

It should be noted that even if Petitioner's airport parking service were not a single integrated service, Petitioner's proposed allocation based on 75% of the total amount paid by the customer fails to reflect separate sales of parking and transportation services that have separate established charges. See *Allright New York Parking, Inc.*, Adv Op Comm T & F, July 26, 2002, TSB-A-02(41)S for a discussion of a similar percentage allocation of fees.

The facts presented by Petitioner in this case do not support its claim that transportation service is separately sold to the customers of Petitioner's parking facility. Neither parking nor transportation service is independently offered for sale to such customers. Accordingly, Petitioner's purported charge for transportation services is merely part of the receipt for Petitioner's parking services that are subject to sales tax under section 1105(c)(6) of the Tax Law. See section 1101(b)(3) of the Tax Law. Therefore, Petitioner is charging its customers who use its parking facility a taxable charge for parking or garaging motor vehicles and is liable for and must collect tax on the entire receipt. See *Allright New York Parking, Inc.*, *supra*.

DATED: January 22, 2008

/s/
Jonathan Pessen
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Taxpayer Guidance Division

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.