

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 whether or not sales tax should be charged on golf cart usage. We conclude that use of the golf carts by Petitioner's customers is not subject to sales tax.

Facts

Petitioner operates a golf course that is open to the public. On its website, it describes itself as a "daily fee golf course." Golfers pay a fee per person to play 18 or 9 holes of golf. Petitioner owns golf carts that are available for all golfers to use during a round of golf. The fee for playing golf with the use of a golf cart is the same as the fee for playing golf without using the cart. Petitioner states that no separate fee is charged for use of the golf carts.

Petitioner asks whether it must collect sales tax from its customers for the use of golf carts.

Analysis

Tax Law § 1105(a) imposes a sales tax on the sale of tangible personal property, except as otherwise provided. Tangible personal property means property with a material existence and perceptibility to the human senses. *See* Tax Law § 1101(b)(6); 20 NYCRR 526.8(a).

A "sale" is any transaction in which there is a transfer of title or possession or both of tangible personal property for consideration. *See* 20 NYCRR 526.7(a)(1). The terms sale, selling and purchase include rentals or leases of tangible personal property. *See* 20 NYCRR 526.7 (a)(b).

Petitioner does not separately charge customers for the use of golf carts, and the price for a round of golf is the same with or without a golf cart. Consequently, we conclude that the use of the golf carts by patrons does not constitute a sale or a rental of tangible personal property, because there is no consideration paid to the Petitioner in exchange for the temporary transfer of possession of tangible personal property. Therefore, the use of the golf carts by customers is not subject to sales tax. However, because we conclude that the golf carts are not sold or rented by

Petitioner to its customers, it cannot purchase the golf carts exempt from sales tax as purchases for resale. Accordingly, Petitioner must pay sales tax when it purchases the golf carts.

DATED: July 14, 2020

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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.