

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 the revenue received for its sight-seeing pedal bus tour is subject to state and/or local sales tax under Articles 28 and 29 of the Tax Law. We conclude that Petitioner’s tours are not subject to sales tax.

Facts

The Petitioner provides pedal bus bike (“vehicle”) sightseeing tours. Passengers book the vehicle for a group tour at a specific date, time and location. The Petitioner provides the driver and tour host. The vehicle has ten pedaling seats, two non-pedaling seats above the rear wheel wells and a three-seat rear bench. The vehicle is equipped with an electric motor assist feature when more power is needed.

Only individuals who booked a group tour in advance of the initial departure are allowed on the vehicle. Each tour lasts between two to three hours on Tuesdays through Sundays between Noon and 8:00PM. The tour host welcomes groups 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 vehicle does not have tables but each passenger has an armrest with a cup holder.

The vehicle travels to local historic sites, breweries and restaurants, allowing passengers to disembark at each location. Each stop lasts approximately twenty minutes so that passengers can look around and buy food and beverages. 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 vehicle, although passengers are allowed to bring food and drink on the vehicle with them. The 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 a sightseeing tour of local historic sites, breweries and restaurants with a tour host who points out locations of interest and answers questions. 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 § 1105(c) of the Tax Law. As long as the price of the ticket is solely for a sightseeing tour and not for food or drink, the receipts from ticket sales will not be subject to sales tax. *See* TSB-A-15(30)S; TSB-A-11(30)S.

DATED: May 26, 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.