

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-01(9)S
Sales Tax
April 12, 2001

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000504B

On May 4, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Brad Lee Steinberg, c/o Law Offices of Brad Lee Steinberg, 60 East 42nd Street, Suite 1344, New York, New York 10165-1399.

The issue raised by Petitioner, Brad Lee Steinberg, is whether the members of the homeowner's associations in the three fact patterns described below may claim exemption from the parking taxes imposed under Sections 1105(c)(6) and 1107(c) of the Tax Law and Section 11-2049 of the Administrative Code of the City of New York.

Petitioner represents several homeowner's associations located within the City of New York. Petitioner inquires about the following fact patterns in which an independent company operates a garage owned by a homeowner's association.

Fact Pattern 1:

Homeowner's "Association A" is an association whose membership is comprised exclusively of owners or residents of residential dwelling units. Association A owns real property and improvements located within the city of New York, all of which are in a defined geographical area, i.e., a high-rise residential building. Located within such geographical area are parking garage facilities owned by Association A and operated for the benefit of the members of Association A and the general public.

Association A has entered into a written agreement of lease with an independent (non-related) garage operator whereby such independent garage operator pays monthly rent to Association A for the right to operate such parking garage facilities. In consideration of such monthly rental payments, the garage operator charges and collects parking fees and taxes thereon from the members of Association A and the general public.

Fact Pattern 2:

Same facts as Fact Pattern 1, however, in this case the homeowner's association ("Association B") has entered into a written agreement of lease with an independent (non-related) garage operator that provides for such independent garage operator to pay monthly rent to Association B for the right to operate the parking garage facilities. In consideration of such monthly rental payments, (i) Association B collects monthly parking fees thereon from its members and thereafter remits such parking fees to the independent garage operator, and (ii) the independent garage operator charges and collects parking fees and taxes thereon from the general public.

Fact Pattern 3:

Same facts as Fact Pattern 1 (i.e., garage operator is charging and collecting parking fees and taxes from homeowner’s association members); however, the homeowner’s association (“Association C”) is prepared to collect such monthly parking fees thereon from its members and thereafter remit such fees to the independent garage operator.

Applicable Authority

Section 1105(c)(6) of the Tax Law, as amended by Chapter 588 of the Laws of 2000, effective February 6, 2001, imposes sales tax upon receipts from the sales, except sales for resale, of the services of:

(6) 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, receipts for such services paid to a homeowner’s association by its members or receipts paid by members of a homeowner’s association to a person leasing the parking facility from the homeowner’s association shall not be subject to the tax imposed by this paragraph. For purposes of this paragraph, a homeowner’s association is an association (including a cooperative housing or apartment corporation) (i) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision and (ii) which owns or operates a garage, parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles located in such area for use (whether or not exclusive) by such owners or residents.

Section 1107 of the Tax Law, as amended by Chapter 588 of the Laws of 2000, effective February 6, 2001, provides, in part:

(a) General. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five and eleven hundred ten, there is hereby imposed on such date, within the territorial limits of such city, and there shall be paid, additional taxes, at the rate of four percent, which except as provided in subdivisions (b) and (d) of this section, shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten. . . .

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(b)(8) The tax imposed by subdivision (a) of this section shall not be imposed on . . . receipts from the services described in paragraph six or seven of subdivision (c) of section eleven hundred five. . . .

(c) Tax on sale of service of parking, garaging or storing of motor vehicles. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five, eleven hundred ten and subdivision (a) of this section, there is hereby imposed on such date, within the territorial limits of such city, and there shall be paid, additional taxes at the rate of six percent on receipts from every sale of the service of 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 of motor vehicles . . . provided, however, that receipts for such services paid to a homeowner's association by its members or receipts paid by members of a homeowner's association to a person leasing the parking facility from the homeowner's association shall not be subject to the tax imposed by this subdivision. For purposes of this subdivision, a homeowner's association is an association (including a cooperative housing or apartment corporation) (i) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision; and (ii) which owns or operates a garage, parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles located in such area for use (whether or not exclusive) by such owners or residents. . . .

Section 1109(a) of the Tax Law provides, in part:

General. In addition to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article, there is hereby imposed within the territorial limits of the metropolitan commuter transportation district created and established pursuant to section twelve hundred sixty-two of the public authorities law, and there shall be paid, additional taxes, at the rate of one-quarter of one percent, which shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. . . .

Section 1212-A(a) of the Tax Law provides, in part:

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Any city in this state having a population of one million or more . . . is hereby authorized and empowered to adopt and amend local laws imposing in any such city: (1) a tax on receipts from every sale of the service of 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, in any county within such city with a population density in excess of fifty thousand persons per square mile, at the rate of eight per centum, on receipts from every sale of such services, except receipts from the sale of such services to an individual resident of such county when such services are rendered on a monthly or longer-term basis at the principal location for the parking, garaging or storing of a motor vehicle owned or leased (but only in the case of a lease for a term of one year or more) by such individual resident. . . .

Section 11-2049 of the New York City Administrative Code, as amended by Chapter 588 of the Laws of 2000, effective February 6, 2001, provides, in part:

. . .there is hereby imposed within the city of New York, and there shall be paid, a tax at the rate of eight percent on receipts from every sale of the service of 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, in every county within the city of New York with a population density in excess of fifty thousand persons per square mile, as determined by reference to the latest federal census; provided, however, that receipts for such services paid to a homeowner's association by its members or receipts paid by members of a homeowner's association to a person leasing the parking facility from the homeowner's association shall not be subject to the tax imposed by this section. For purposes of this section, a homeowner's association is an association (including a cooperative housing or apartment corporation) (i) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision; and (ii) which owns or operates a garage, parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles located in such area for use (whether or not exclusive) by such owners or residents. The tax imposed on the receipts described in this section is in addition to the tax imposed on such receipts under subchapter one of this chapter or section eleven hundred seven of the tax law, as the case may be.

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Technical Services Bureau Memorandum TSB-M-91(7)S, dated March 1, 1991, entitled State and Local Sales Tax Imposed on Parking Fees June 1, 1990, provides, in part:

The services of parking, garaging and storing motor vehicles are taxable when provided by an owner or operator of a parking lot, parking garage (except as otherwise excluded) or any other place engaged in providing parking, garaging or the storage of motor vehicles. . . .

* * *

The tax imposed on parking, garaging and storing is a broadbased tax that affects nearly any individual, organization, business or governmental entity that makes a charge for the privilege of parking, or garaging or storing a motor vehicle.

Technical Services Bureau Memorandum TSB-M-01(3)S, dated January 26, 2001, entitled Expanded Exclusion for Parking Charges Paid by Homeowners' Association Members, provides, in part:

Governor George E. Pataki has signed legislation expanding the exclusion from state and local sales taxes on receipts from parking charges paid by members of a qualifying homeowners' association. Effective February 6, 2001, the exclusion now includes receipts paid by the members to a person leasing the parking facility from the homeowners' association. The exclusion applies to the 4% New York State tax, all local taxes, the 1/4% Metropolitan Commuter Transportation District tax, the 6% Municipal Assistance Corporation parking tax imposed in New York City, and the additional 8% Manhattan parking tax.

To be eligible for the exclusion from tax, all of the following conditions must be met:

- The homeowners' association must own or operate the garage, parking lot, or other parking facility (whether or not it is operated exclusively for its members).
- The homeowners' association must be an association that has a membership comprised exclusively of owners or residents of residential dwelling units (such as single-family homes, condominium units, or cooperative housing or apartments).
- The dwelling units must be in a defined geographical area, such as a housing development or subdivision, and the parking facility must be located within that defined geographical area.

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- The members must pay the parking charges to the homeowners' association, **or to a person leasing the parking facility from the homeowners' association.**

Parking charges paid to a homeowners' association or to a person leasing the parking facility from the homeowners' association, by association members, for parking services that are not provided under the above conditions and charges paid by persons other than association members remain subject to state and local sales taxes. . . .

Opinion

Effective December 1, 1997, receipts from parking charges paid by homeowner's association members to a qualifying homeowner's association that operated the parking facility where services are provided are excluded from the 4% state sales tax and the 1/4% tax imposed within the Metropolitan Commuter Transportation District. Effective September 12, 1998, the exclusion from taxes for parking charges paid to a homeowner's association by its members was expanded to include the 6% Municipal Assistance Corporation parking tax imposed in New York City and the additional 8% Manhattan parking tax (whether or not the member qualifies as a Manhattan resident), as well as to allow the exclusion where the association owns or operates the parking facility. Effective February 6, 2001, the exclusion from taxes for parking charges paid to a qualifying homeowner's association was further expanded to exempt from state and local sales tax receipts for parking services paid by members of a qualifying homeowner's association to a person leasing a parking facility from such association. See Sections 1105(c)(6), 1107(c) and 1109(a) of the Tax Law and Section 11-2049 of the Administrative Code of the City of New York.

Central to Petitioner's inquiry for all three fact patterns described in this Petition is the statutory requirement prior to February 6, 2001 that the parking charges must be paid to the homeowner's association by its members in order for the members to be eligible to claim the parking tax exemption. In such cases where an independent third party operates a parking garage owned by such an association, the issue arises whether that condition is met.

The 1997 legislation allowed the parking tax exemption only when the parking charges were paid to a qualifying homeowner's association and the garage was operated by the association. The 1998 legislation allowed the exemption when the association either owns or operates the garage, but the law continued to require that the parking charges be paid to the association. Therefore, prior to February 6, 2001, the exclusions from sales tax on parking charges as provided for in Sections 1105(c)(6), 1107(c) and 1109(a) of the Tax Law and Section 11-2049 of the New York City Administrative Code did not apply where the members of a homeowner's association paid the parking charges to an independent garage operator, even though the association owned the parking facility. Since the parking charges are paid by the members of Homeowner's Associations A and C directly to the independent garage operators, they were not excluded, prior to February 6, 2001,

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under the homeowner's association provisions in the Tax Law from the State or New York City sales taxes on parking. However, if the member's primary residence is in Manhattan, the parking receipts may have been exempt, pursuant to Section 1212-A(a)(1) of the Tax Law, from the 8% Manhattan additional parking tax. See Technical Services Bureau Memorandum, Change in the New York City Parking Tax Exemption for Manhattan Residents, November 7, 1996, TSB-M-96(13)S. Accordingly, prior to February 6, 2001, the members of Homeowner's Associations A and C could not claim exemption from the 4 1/4% New York State or the 6% New York City sales tax, and could only claim exemption from the 8% additional Manhattan parking tax if they were qualified Manhattan residents (see TSB-M-96(13)S, supra; TSB-M-01(3)S, supra).

However, it was possible prior to February 6, 2001, for an association that owns a parking garage to enter into an agreement with a third party garage operator, as contemplated by the legislature, which would come within the purview of the exclusion. Such is the case in Petitioner's Fact Pattern 2, where, under the terms of the agreement, Homeowner's Association B collects the monthly parking charges from its members and remits the payments to the garage operator. The member is paying the association for garage space owned by the association, even though another entity is operating the garage. Accordingly, since Homeowner's Association B meets all of the statutory criteria required for the exclusion, parking charges paid by its members were exempt from all sales taxes prior to February 6, 2001 (see TSB-M-01(3)S, supra).

As of February 6, 2001, Sections 1105(c)(6) and 1107(c) of the Tax Law and Section 11-049 of the New York City Administrative Code permit the exemption to apply to receipts collected from members of a homeowner's association when paid to the homeowner's association or when paid to a person leasing the parking facility from the homeowner's association. Therefore, as of February 6, 2001, the members of Homeowner's Associations A and C, as well as the members of Homeowner's Association B, meet all of the statutory criteria required for the exclusion and may claim exemption from all sales taxes (see TSB-M-01(3)S, supra).

DATED: April 12, 2001

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