

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

TSB-A-02(41)S
Sales Tax
July 26, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S010307A

On, March 7, 2001, the Department of Taxation and Finance received a Petition for Advisory Opinion from Allright New York Parking, Inc., 1100 Brooks Avenue, Rochester, New York, 14624.

The issue raised by Petitioner, Allright New York Parking, Inc., is whether the separate statement of charges by the operator of an “off-airport parking lot” for transportation to the airport, where the transportation charge is calculated at a fixed percentage of the total charge to the customer, constitutes a separate charge for nontaxable transportation service.

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

In 1995, Petitioner opened an off-airport parking facility at 1100 Brooks Avenue in the Town of Gates (Rochester) serving the patrons of the Greater Rochester International Airport. Petitioner provides its customers with parking facilities during the time that those customers are traveling by air. Petitioner also provides its customers with transportation to and from the nearby airport. Neither parking nor transportation is independently offered for sale by Petitioner to its customers. The original facility of 900 parking spaces was expanded by an additional 300 spaces in July, 1997, for a total of 1,200 spaces. From the outset of operations in 1995, Petitioner collected and remitted the New York State sales tax on its total charge for parking at its lot and transporting its customers to and from the airport.

Commencing February 1997, Petitioner separated its charges on customer receipts, designating 30% of its periodic (daily, weekly, monthly) fee as the nontaxable component, attributable to transportation. The remaining 70% of its periodic fee was designated as the charge for parking and the sales tax due on such charge. Petitioner provided sample receipts. One receipt showed a total charge of \$ 2.25 for approximately three and a half hours of parking. This amount was broken out into a “Nontaxable” charge of \$ 0.67, a “Taxable” charge of \$ 1.46, and sales tax in the amount of \$ 0.12. Another receipt showed a total charge of \$ 20.00 for approximately three days and seven hours of parking. This amount was broken out into a “Nontaxable” charge of \$ 6.00, a “Taxable” charge of \$ 12.96, and sales tax in the amount of \$ 1.04. Petitioner states that this itemization is reflected on signage at the facility. Customer questions, if any, relative to the foregoing are routinely referred to the Project Manager for a full explanation of the charges and services available.

Applicable Law and Regulations

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

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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 the vendor of the service of parking or garaging motor vehicles. Petitioner's parking facility exists to service patrons of the Greater Rochester International Airport. Petitioner provides its customers with parking facilities during the time that those customers are traveling by air. Petitioner also, as part of its parking service, provides its customers with transportation to and from the nearby airport. Customers have no reason to avail themselves of Petitioner's "transportation" service if they are not utilizing Petitioner's parking facility. It is unlikely that

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customers would use Petitioner's parking facility unless they had access to transportation to and from the Greater Rochester International Airport. Petitioner does not contend that the customers who use its parking facility are not also patrons of the Greater Rochester International Airport. Nor does Petitioner contend that it shuttles its customers to locations other than the Greater Rochester International Airport. Petitioner does not offer its shuttle service to persons who are not customers of its parking facility. Therefore, Petitioner's charge for parking and shuttle service appears to be a charge for the integrated service of parking or garaging motor vehicles and shuttling its customers to the airport and back.

Petitioner has designated 30% of its charges for use of the parking facility as exempt charges for transportation service. A receipt for parking for three and a half hours for a total charge of \$2.25 designates \$.67 as Non-Taxable (transportation), \$1.46 as Taxable (parking) and \$.12 as sales tax, while a receipt for parking for 79 hours (three days and seven hours) designates \$6.00 as Non-Taxable (transportation), \$12.96 as Taxable (parking) and \$1.04 as sales tax. Based on these sample receipts submitted by Petitioner, one customer is apparently charged \$.67 for shuttle service from the parking facility to the airport and back while the second customer is apparently charged \$6.00 for the same shuttle service. In addition, if five customers arrived in a single car and parked for three hours, the charge to each customer for shuttle service (using the above receipt information) would amount to \$0.67 divided by five customers or about \$0.13 per customer. Yet the customer who arrives alone and parks for three days and seven hours pays \$6.00 for the identical shuttle service. These examples indicate that Petitioner does not have an established charge for round trip transportation from its facility to the airport.

Clearly, a charge based on 30% of the total amount paid by the customer for parking does not represent a charge for transportation services. This charge does not reasonably reflect the value to the purchaser of parking services of any transportation service that may be provided by Petitioner. Furthermore, Petitioner does not offer to sell a transportation service without also charging its customers for parking, since the charge for transportation is only determined as a percentage of the charge for parking. Neither service is independently offered for sale to customers. Therefore, Petitioner is charging its customer a taxable charge for parking or garaging motor vehicles and is liable for and must collect tax on the entire receipt.

DATED: July 26, 2002

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