

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

TSB-A-05(23)S
Sales Tax
June 22, 2005

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S040628C

On June 28, 2004, the Department of Taxation and Finance received a Petition for Advisory Opinion from University at Albany, SUNY, 1400 Washington Avenue, Albany, NY 12222.

The issue raised by Petitioner, University at Albany, SUNY, is whether vehicle registration fees collected by Petitioner from students and staff are subject to sales tax.

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

Petitioner charges a vehicle registration fee which covers the cost of documenting vehicles that may be on campus. The revenue collected from vehicle registration is placed in a separate account and is used to offset the cost associated with having personnel input data collected concerning the identification and ownership of vehicles parked on campus. More specifically, the revenue from vehicle registration supports the payment of labor and fringe benefit expenses for office staff to accept, process and distribute registrations, the cost and maintenance of an information system to record and track the registered vehicles, the purchase of registration stickers, postage and printing costs, and general office expenses for the registration staff. The cost of enforcing the registration requirement includes both labor and fringe benefit expenses for staff to verify that only registered vehicles use campus parking facilities and maintenance costs for the equipment used to verify registrations. The vehicle registration information enables Petitioner to, among other things, identify and contact the owners of vehicles so registered in the event of emergencies. The registration fee revenue ensures adequate parking for students and staff and compliance with Petitioner's parking regulations through a comprehensive enforcement program. For the 2004-2005 academic year the registration fee for all students and staff is \$20 per year per vehicle registered. Registration alone, however, confers no parking privileges on the registrant.

Petitioner also charges a separate parking fee which confers on registrants the privilege of parking on the campus. The parking fee schedule for the 2004 - 2005 academic year ranges from \$0.0 (for certain unionized employees under the terms of their collective bargaining agreements) to \$70 for non-unionized employees and employees of corporations affiliated with Petitioner. The parking fee for undergraduate students is a component of Petitioner's Comprehensive Service Fee. The registration and parking fees are separately itemized on Petitioner's invoices, and the parking fee revenues are maintained separately from the registration fee revenues for accounting and financial reporting purposes. Revenue from the parking fee is placed in a separate account and used to maintain Petitioner's parking lots (e.g., paving, painting, snow removal, and security).

A registration sticker is provided to persons who have registered their vehicle. A person who wishes to park on campus who uses more than one vehicle and therefore desires to register more than one vehicle pays one parking fee (e.g., \$70 for the non-unionized employees) and multiple registration fees (\$20 for each of the vehicles). An individual registration sticker is provided for each vehicle and a single separate *hang tag*, referenced to each of the registered vehicles for which parking is valid, is provided to be placed inside the particular vehicle being used and parked. The registration stickers are marked to denote that a hang tag must be displayed in conjunction with that registration and the hang tag is marked to denote the registrations for which it is valid. For persons who pay a fee for parking and register only a single vehicle, the registration sticker itself is marked to reference that the vehicle is eligible to be parked on campus. Persons who for various reasons (e.g., certain unionized employees) are not required to pay for parking, must nonetheless pay the registration fee and they are likewise issued a registration sticker that reflects that the vehicle is registered and eligible to be parked upon campus. Visitors to the campus may be required to pay a parking fee but are not required to pay a registration fee.

Applicable law and regulations

Section 1101(b)(3) of the Tax Law, in defining the term *receipts* for purposes of the sales tax sets forth, in pertinent part, that *receipt* means “the sale price of any property and the charge for any service taxable under this article...”

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax ... upon:

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(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, 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 1116 of the Tax Law provides, in part:

Exempt organizations (a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons;

Section 527.1(b) of the Sales and Use Tax Regulations provides:

Taxable and exempt items sold as a single unit. When tangible personal property, composed of taxable and exempt items is sold as a single unit, the tax shall be collected on the total price.

Example: A vendor sells a package containing assorted cheeses, a cheese board and a knife for \$15. He is required to collect tax on \$15.

Section 66 of the General Construction Law provides, in part:

1. A “public corporation” includes a municipal corporation, a district corporation, or a public benefit corporation.

2. A “municipal corporation” includes a county, city, town, village and school district.

3. A “district corporation” includes any territorial division of the state, other than a municipal corporation, heretofore or hereafter established by law which possesses the power to contract indebtedness and levy taxes or benefit assessments upon real estate or to require the levy of such taxes or assessments, whether or not such territorial division is expressly declared to be a body corporate and politic by the statute creating or authorizing the creation of such territorial division.

4. A “public benefit corporation” is a corporation organized to construct or operate a public improvement wholly or partly within the state, the profits from which inure to the benefit of this or other states, or the people thereof.

* * *

6. An “education corporation” is a corporation as defined in subdivision one of section two hundred sixteen-a of the education law.

Section 216-a of the Education Law provides, in pertinent part:

1. The term “education corporation” as used in this section means a corporation (a) chartered or incorporated by the regents or otherwise formed under this chapter, or (b) formed by a special act of this state with its principal purpose an education purpose and which is a member of the university of the state of New York,...

Section 352.1 of the Education Law provides:

There is hereby created in the state education department and within the university of the state of New York as established under the board of regents a corporation to be known as the state university of New York which shall be responsible for the planning, supervision and administration of facilities and programs in accordance with the plan proposed by the state university trustees as approved by the regents pursuant to section two hundred thirty-seven of this chapter. The state university shall provide for higher education supported in whole or in part with state moneys in accordance with the provisions of section three hundred fifty-eight hereof, and shall perform such other duties as may be entrusted to it by the provisions of this article and any other law. Subject to the terms of any agreement to which it is a party, such corporation shall have the care, custody, control and management of the lands, grounds, buildings, facilities and equipment used for the purposes of the state operated institutions of the state university, and it shall have power to protect, preserve and improve the same.

Section 360 of the Education Law provides, in part:

Powers to regulate traffic on university grounds 1. For the purpose of providing for the safety and convenience of its students, faculty, employees, and visitors within and upon the property, roads, streets, and highways under the supervision and control of the state university, the board of trustees is hereby authorized to:

a. Adopt and enforce such provisions of the vehicle and traffic law, or any rules of the state department of transportation adopted under the authority of that law, as control or regulate vehicular or pedestrian traffic and parking.

* * *

c. Adopt and enforce campus rules and regulations not inconsistent with the vehicle and traffic law relating to parking, vehicular and pedestrian traffic, and safety. Such rules and regulations may include provisions for ... the payment of fees for the *registration* or *parking* of such vehicles, and the assessment of administrative fines upon

the owner or operator of such vehicles for each violation of the regulations (emphasis added)

Opinion

Petitioner is part of the State University of New York, a corporation created in the State Education Department and within the University of the State of New York. See section 352.1 of the Education Law. Petitioner's governing Board of Trustees is empowered to adopt and enforce campus rules relating to parking, vehicular and pedestrian traffic, and safety; including provisions for the payment of fees for the registration or parking of vehicles. See section 360.1 of the Education Law.

As described by Petitioner, the vehicle registration fees and the parking related fees are two separate and distinct fees charged for two separate purposes. The registration fees and parking fees are separately stated on Petitioner's invoices. The registration fee confers no parking privileges.

A person using more than one vehicle for transportation would incur a single parking fee but would pay multiple registration fees of \$20 for each of the vehicles being used on campus. Those individuals who pursuant to negotiated union agreements are not required to pay for parking privileges must pay the registration fee for each vehicle being used on campus. Visitors to the campus may be required to pay a parking fee but are not required to pay a registration fee.

Since the service of registering a motor vehicle is not specifically enumerated in section 1105(c) of the Tax Law, the vehicle registration fees could only be found to be subject to sales tax if they are considered to be receipts attributable to providing parking, garaging or storage of motor vehicles, which are taxable services under section 1105(c)(6) of Tax Law.

In describing the purpose of the general requirement of New York State for all motor vehicles to be registered, New York Jurisprudence 2d (8 NY Jur 2d, Automobiles, 82) states, "The underlying purpose of these provisions is to establish a uniform system of operation and use of motor vehicles, which will supervise vehicles, their movement and control, their identity in relation to the public, and any resultant damage or injury they may occasion." The purpose of Petitioner's registration requirement as it applies to the confines of the campus of Petitioner, is similar to the purpose of the statewide registration requirement stated above. Petitioner's registration requirements are separately authorized powers granted by the Legislature and, therefore, may properly be distinguished from Petitioner's parking requirements.

Accordingly, Petitioner's vehicle registration fees described in this Advisory Opinion are not considered receipts from parking, garaging or storing of motor vehicles and therefore are not subject to the sales tax imposed by section 1105 of the Tax Law. See also *State University of New York at Binghamton*, Adv Op Comm T & F, February 2, 1998, TSB-A-98(5)S. Unlike *State University of New York at Stony Brook*, Adv Op Comm T & F, January 28, 2000, TSB-A-00(4)S,

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which concluded that the vehicle registration fee in that case was subject to sales tax, Petitioner in the present case indicates that it charges separate fees for vehicle registration and parking and that registration confers no parking privileges.

Petitioner is an exempt government entity under section 1116(a)(1) of the Tax Law. Petitioner's sales, however, of tangible personal property or services of a kind ordinarily sold by private persons are subject to sales tax. Petitioner's parking services are of a kind ordinarily sold by private persons and are subject to tax under section 1105(c)(6) of the Tax Law. Petitioner appears to be an education corporation under section 216-a of the Education Law. Accordingly, the exception from the imposition of the sales tax for public, municipal or district corporations, or agencies and instrumentalities thereof, as provided in section 1105(c)(6) does not apply to Petitioner. Therefore, Petitioner's charges for separate parking fees are subject to sales tax under section 1105(c)(6).

DATED: June 22, 2005

/s/
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Technical Services Division

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