

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-10(16)S
Sales Tax
April 16, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100316D

On March 16, 2010, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether fees collected from faculty, staff, and students for the purpose of registering their motor vehicles are subject to sales tax.

We conclude that Petitioner's vehicle registration fees, which encompass vehicle registration for both the purpose of controlling vehicles on campus and parking privileges, are subject to sales tax.

Facts

Petitioner charges a \$9.65 annual registration fee for all vehicles parked on campus. All faculty, staff, and students are required to register motor vehicles annually with the campus parking office. The revenue generated from the registration fee is intended to cover the cost of registrations, hang tags and related processing costs. Petitioner submitted a "Parking Permit Analysis," based on 2007-2008 costs, that details the expenses of the registration program, and computes the \$9.65 annual fee on the basis of these expenses.

The registration fees are collected and accounted for in a separate account from parking revenue generated from parking meters and paid parking lots. In general, however, the registration fee entitles the registrant to park on campus without payment of an additional fee.

Regulations were enacted relating to the regulation of parking and traffic on Petitioner's campus. *See* 8 NYCRR Part 572. These regulations in pertinent part provide:

§ 572.2 Vehicle registration.

(b) The on-campus registration of motor vehicles shall be in accordance with procedures approved by the chief administrative officer, or designee, for faculty, staff, students and visitors. Such motor vehicle registration shall take place at the campus parking office upon payment of any fee as approved by the chancellor or designee.

(c)

(1) Faculty, staff, and student vehicles. Upon completion of the vehicle registration form and payment of the required fee(s), a vehicle registration permit is issued to faculty, staff, and students.

(2) All faculty, staff, and students are required to register motor vehicles annually with the campus parking office....

* * *

§ 572.5 Vehicle permits.

(a) A motor vehicle permit must be affixed to the vehicle for which issued in accordance with printed instructions issued with the permit.

(b) Permits are issued for the term indicated unless association with the university terminates at an earlier date. Mutilation, theft or other disposition of a permit must be reported promptly to the campus parking office.

* * *

(d) Vehicle registration permits and/or replacements will be provided only after the appropriate fee, as approved by the Chancellor, or designee, has been paid. This fee is applicable to all permits issued during the year September 1st to August 31st by the campus parking office.

* * *

§ 572.7 Parking.

(a) Parking is prohibited on all roadways unless otherwise posted.

(b) Possession of a motor vehicle permit entitles the holder to park only if there is available space in the allotted parking areas. The university does not guarantee a parking space.

(c) Faculty, staff and students must display a valid permit.

* * *

(m) Parking fees as approved by the Chancellor or designee, shall be charged for motor vehicles parked within designated lots, consistent with applicable collective bargaining agreements and in accordance with guidelines established by the Chancellor or designee. Such guidelines shall provide that the determination of the amount of the fee be substantially based on an analysis of the costs attributable to the operation and maintenance of the parking facilities owned and operated by the State University at [REDACTED].

Analysis

Petitioner, as part of the State University of New York, is a corporation created in the State Education Department and within the University of the State of New York, under the Board of Regents. Thus, Petitioner is an exempt governmental entity under Section 1116(a)(1) of the Tax Law. However, a governmental entity's sales of tangible personal property or services of a kind ordinarily sold by private persons are subject to sales tax. A governmental entity'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. Because Petitioner is a corporation created under the Education Law (*See* Education Law §352.1), the exception from the imposition of the sales tax for public, municipal, or district corporations, as provided in Section 1105(c)(6), does not apply to Petitioner.

Petitioner has adopted regulations to 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. According to Petitioner's traffic and parking regulations, when a person pays to register his or her vehicle with Petitioner, that person is also entitled to park on the campus of Petitioner. This is evidenced by the fact that the owner of a vehicle pays a single fee to register a motor vehicle with Petitioner, and Petitioner then issues a permit to the owner of the vehicle. That permit, when properly displayed, confers the right to park in the appropriate (student, faculty, staff, etc.) designated areas on the campus. Petitioner does not charge two separate and distinct fees for registration and parking, and does not require separate permits for registration and parking. Petitioner's single fee for both vehicle registration and parking confers parking privileges for the registered vehicles. Therefore, the vehicle registration fee is subject to sales tax under Section 1105(c)(6) of the Tax Law. *See* TSB-A-10(8)S, Adv Op Comm T&F, February 25, 2010; TSB-A-00(4)S, Adv Op Comm T&F, January 28, 2000.

DATED: April 16, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of 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.