

**New York State Department of Taxation and Finance  
Office of Counsel**

TSB-A-18(1)S  
Sales Tax  
April 12, 2018

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S180206A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether a “convenience fee” it charges when credit cards are used for purchases is subject to New York State and local sales tax. We conclude that this fee is properly included as part of the basis upon which sales tax, when applicable, is calculated.

**Facts**

Petitioner is a club that imposes a “convenience fee” when credit cards are used to make purchases. This fee is a percentage of the total credit card purchase, and is charged to “offset the loss of revenue in accepting credit cards.” Petitioner does not identify the types of sales that it makes, so it is assumed that Petitioner is a social or athletic club per Tax Law §1105(f)(2), and that it accepts credit cards for the purchase of tangible personal property, services, food and drink, and for the payment of dues.

**Analysis**

New York imposes sales and use tax on, among other things, the receipts from every retail sale of tangible personal property, as well as the receipts from every sale, other than sales for resale, of certain enumerated services. *See* Tax Law §§ 1105(a) and (c). The tax is also imposed on the receipts from the sale of food and drink by restaurants, taverns or other establishments (as well as other charges made therewith), and “dues” that are paid to social or athletic clubs. *See* Tax Law § 1105(d), (f)(2). “Receipt” is defined as the amount of the sale price of any property and the charge for any service that is subject to tax, without any deduction for expenses. *See* Tax Law § 1101(b)(3); 20 NYCRR 526.5(e). The term “dues” includes any membership fee paid to a social or athletic club, as well as any assessment, irrespective of the purpose for which it is made. *See* Tax Law § 1101(d)(6); 20 NYCRR 527.11(b)(2).

Petitioner’s “convenience fee” is a charge it makes to “offset” the loss of revenue that occurs when a customer uses a credit card. This “loss of revenue” presumably is caused by a fee that Petitioner must pay to process credit card payments, which is an expense it incurs when making a sale. Expenses incurred by a vendor in making a sale, regardless of the taxable status of the sale, are not deductible from its receipts. *See* 20 NYCRR 526.5(e). When making a sale of food, drink, tangible personal property or services that is subject to sales tax, Petitioner’s “convenience fee” is a part of its receipts for such and must be included in the basis upon which sales tax is calculated. Likewise, to the extent a “convenience fee” is charged when collecting taxable dues from members, the fee itself is considered dues and is subject to sales tax. *See, e.g.,*

TSB-A-90(56)S (finance charge considered an increase in the amount of a member's dues); TSB-A-85(38)S (any charge that is paid for the privilege of being a member constitutes dues). If both taxable and nontaxable items are purchased in a single transaction and the items are separately itemized, however, sales tax need only be collected on the portion of the "convenience fee" attributable to the sale of the taxable items. *See, e.g.*, TSB-A-97(11)S (the tax consequence of a cost component of a charge is the same as the tax consequence of the charge itself).

DATED: April 12, 2018

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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.