

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-98(40)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S971231F

On December 31, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Paul Smith's College of Arts and Science, Rts. 86 & 30, PO Box 265, Paul Smiths, New York 12970. Petitioner, Paul Smith's College of Arts and Science, provided additional information pertaining to the Petition on April 23, 1998.

The issue raised by Petitioner is whether the term "rent" referred to in Section 1116(c) of the Tax Law includes all monies paid for services rendered at the Hotel Saranac including room charges, food served in rooms and food served on the Hotel premises.

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

Petitioner is currently an institution maintaining a two plus two (2+2) program granting both Associates and Bachelors Degrees in Hotel Restaurant Management, Culinary Arts and Forestry. Petitioner has been issued an Exempt Organization Certificate from the Department of Taxation and Finance as a qualifying exempt organization under Section 1116(a)(4) of the Tax Law. The Hotel Saranac is a subsidiary of Petitioner. The Hotel Saranac owns the hotel building and the land upon which it is built, but does not operate the hotel. Petitioner operates the hotel as part of its educational program, using its own employees. The Hotel Saranac provides an internship program for all students, providing hands-on participation in the restaurant, lounge and hotel. Students are allowed training in the most state-of-the-art hospitality computer programs available. This training readies the students for their careers upon completion of their internship and graduation from Petitioner. Students are trained in the following hotel and restaurant computer programs:

- a. DELPHI, a banquet event program; and
- b. MEETING MATRIX, an event management program; and
- c. SPRINGER MILLER - HOST, a reservations and guest room management program; and
- d. CBORD, an integrated food management and food service program which touches upon inventory, costing, forecasting, purchasing and recipes. These systems provide students with up-to-date technical training of audit and internal controls.

In addition, the students perform all functions in the hotel including, but not limited to, serving in the restaurant and lounge, bartending, food preparation, banquet and catering services, front desk, night audit, housekeeping, laundry, maintenance and food receiving. The hotel has less than 100 rooms available for occupancy.

Applicable Laws and Regulations

Section 1101(c)(6) of the Tax Law defines "rent" as "The consideration received for occupancy valued in money, whether received in money or otherwise."

Section 1105(e) of the Tax Law imposes sales tax on:

The rent for every occupancy of a room or rooms in a hotel in this state, except that the tax shall not be imposed upon (1) a permanent resident, or (2) where the rent is not more than at the rate of two dollars per day.

Section 1116 of the Tax Law provides, in part:

(b) Nothing in this section shall exempt:

* * *

(7) rent received by a hotel operated by a college or university, where such hotel offers one hundred or more rooms for occupancy, and where the individual paying said rent is not doing business on behalf of any organization exempted pursuant to subdivision (a) of this section.

(c) (1) Where any organization described in paragraph four of subdivision (a) of this section carries on its activities in furtherance of the purposes for which it was organized, in premises in which, as part of said activities, it operates a hotel, occupancy of rooms in the premises and rents therefrom received by such corporation or association shall not be subject to tax hereunder.

(2) Nothing in this subdivision shall exempt any hotel operated by a college or university and which offers one hundred or more rooms for occupancy from collecting taxes imposed pursuant to section eleven hundred five of this article from individuals who are not doing business on behalf of an organization exempted pursuant to subdivision (a) of this section.

Section 527.9 of the Sales and Use Tax Regulations provides, in part:

Hotel occupancy. (Tax Law, Sec. 1105(e)) (a) Imposition. A sales tax is imposed on every occupancy of any room or rooms in a hotel, motel or similar establishment at the combined statewide and local sales tax rate in effect at the situs of such establishment, except that the tax shall not apply to (1) the charges for occupancy by a permanent resident, or (2) where the charge is \$2 or less per day.

* * *

(b) Definitions. As used in this section the following terms shall mean:

* * *

(7) Rent. (i) The consideration received for occupancy valued in money, whether received in money or otherwise. The term rent includes separately stated charges for the use of furnishings and equipment, maid service, towel and linen service, telephone service and other accommodations.

(ii) Charges for food and drinks, entertainment, valet and laundry service, theatre ticket service and transportation do not constitute rent but may be taxable under other sections of the Tax Law.

* * *

(h) Food services offered by hotels.

(1) American plan. (i) A hotel operating on the American plan, modified American plan or other similar plan, must collect tax on the total charge for both rooms (if the charge is more than \$2 a night) and meals for the first 90 days. When the occupant becomes a permanent resident, the operator will discontinue collecting tax on the room charge and, in lieu of establishing a separate charge for meals, the operator may use the schedule shown below to determine the percentage of the total charge to be apportioned to meals furnished, and collect tax based on that amount.

SCHEDULE

Total charge includes	Room	Meals
Room, breakfast, lunch, dinner	50%	50%
Room, lunch, dinner	60%	40%
Room, breakfast, dinner	60%	40%
Room, breakfast, lunch	70%	30%
Room, dinner	75%	25%
Room, lunch	85%	15%
Room, breakfast	85%	15%

If the hotel operator neither separately states the charge for room and meals nor uses the above schedule, the entire charge is taxable whether the occupant is a permanent resident or not.

Example 1: A hotel charges a permanent resident for room and meals a flat rate of \$90 a week. Meals consist of breakfast and dinner. The operator may use the preceding schedule and collect the tax on 40 percent of the total (\$36), which is the amount allocated to meals.

(ii) A hotel offering a free continental breakfast (juice, pastry and coffee) may not separately state a reasonable value for the breakfast or use the American plan schedule set forth in subparagraph (i) of this paragraph, as the entire charge is subject to tax as rent for the room.

(2) The separately stated charges for food and drink at a restaurant facility operated by a hotel are taxable. (See section 527.8 of this Part.)

(3) Charges for room service constitute part of the receipt from the sale of food and drink and are taxable.

Opinion

In this case, Petitioner, an exempt organization under Section 1116(a)(4) of the Tax Law, operates the Hotel Saranac as part of Petitioner's educational program. The hotel has less than 100 rooms available for occupancy. The students perform many functions in the hotel such as serving in the restaurant and lounge, bartending, food preparation, banquet and catering services, front desk, night audit, housekeeping, laundry, maintenance and food receiving. Under these circumstances, the rent received by Petitioner for occupancy in the Hotel Saranac is exempt from sales tax under Section 1116(c) of the Tax Law.

Pursuant to Section 527.9(b)(7) of the Sales and Use Tax Regulations, rent received for occupancy of a room in a hotel includes separately stated charges for the use of furnishings and equipment, maid service, towel and linen services, telephone service and other accommodations. Charges for food and drink, entertainment, valet and laundry service, theatre ticket service and transportation do not constitute rent but may be taxable under other sections of the Tax Law. (See Section 1105 of the Tax Law).

Separately stated charges for food and drink at a restaurant facility operated by Petitioner at the hotel and charges for room service do not constitute rent but are subject to sales tax under Section 1105(d) of the Tax Law. If Petitioner offers meal plans at the hotel and does not separately state room charges and meal charges, Petitioner may use the schedule in Section 527.9(h) of the Sales and Use Tax Regulations and collect tax on the portion of the total charge allocated to meals under this schedule. Where Petitioner does

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not separately state charges for the room and meals, nor use the schedule referred to above to allocate a portion of the total charge to meals, the entire charge is taxable. Where Petitioner is offering a free continental breakfast, the entire charge for occupancy for a room in the hotel is considered rent and is exempt from tax.

DATED: July 1, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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