

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

TSB-A-04(21)S
Sales Tax
September 2, 2004

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S031113B

On November 13, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from 1624 Musso View Associates, LLC, 1624 Musso View Associates Avenue, Cheshire, Connecticut, 06410. Petitioner, 1624 Musso View Associates, LLC, provided additional information pertaining to the Petition on January 16, 2004.

The issue raised by Petitioner is whether it is required to collect sales tax on charges to its customers for animals “harvested” by its customers.

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

Petitioner operates a facility on approximately 175 acres of land in Homer, New York known as "Big Boar Lodge." The lodge consists of overnight accommodations in a rustic cabin for clients of the facility. Clients may spend several nights in the lodge while they select various domestic game animals to hunt at the facility.

The facility operates by purchasing certain domestic game animals such as Russian wild boar, whitetail deer, bison, European red stag, ibex goat and Rocky Mountain elk at auctions and transporting the animals to the facility. Once delivered to the facility, the animals are usually contained in a half-acre holding area that consists of a grazing/feeding area and barn. Approximately twenty percent of all animals are born and raised at the facility. All animals are cared for through daily feedings and veterinary medications as needed.

The animals are kept in the holding area until they are selected by the client to be hunted. The animal is then released into the 175-acre preserve area where it remains until it is wounded or killed during a hunt by a client. After the hunt, the client has the option of having the animal processed at the location or assuming possession of the animal carcass. However, the client must take all animals he or she shoots. The client has the additional options of purchasing butchering services, taxidermy services and having the animal officially “scored” in the record book of exotics and Safari Club International. Prices, excluding the separate charges for lodging and the above mentioned options, are determined by the particular species of animal taken in the hunt. If no animal is taken by the client in the hunt, there is no charge in addition to the charge for lodging. Petitioner concedes that its charges for lodging are subject to sales tax pursuant to section 1105(e) of the Tax Law.

Applicable law and regulations

Section 1105 of the Tax Law provides, in part:

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

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1115 of the Tax Law provides, in part:

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(1) Food, food products, beverages, dietary foods and health supplements, sold for human consumption but not including (i) candy and confectionery, (ii) fruit drinks which contain less than seventy percent of natural fruit juice, (iii) soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains or in connection therewith (other than coffee, tea and cocoa) and (iv) beer, wine or other alcoholic beverages, all of which shall be subject to the retail sales and compensating use taxes, whether or not the item is sold in liquid form. The food and drink excluded from the exemption provided by this paragraph under subparagraphs (i), (ii) and (iii) of this paragraph shall be exempt under this paragraph when sold for seventy-five cents or less through any vending machine activated by the use of coin, currency, credit card or debit card. With the exception of the provision in this paragraph providing for an exemption for certain food or drink sold for seventy-five cents or less through vending machines, nothing herein shall be construed as exempting food or drink from the tax imposed under subdivision (d) of section eleven hundred five.

Section 527.4 of the Sales and Use Tax Regulations provides, in part:

Sale of services of producing, fabricating, processing, printing or imprinting.

(a) Imposition. (1) Section 1105(c)(2) of the Tax Law imposes a tax on the receipts from services of producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the property.

* * *

(d) Processing. Processing is the performance of any service on tangible personal property for the owner which effects a change in the nature, shape, or form of the property.

Example 1: A person raises a hog for his own food. He has the hog slaughtered dressed, cut and wrapped by a butcher. The butcher's services are taxable.

Section 528.2(a) of the Sales and Use Tax Regulations provides, in part:

Food and food products. (1) Food and food products, except candy and confectionery, when sold for human consumption, are exempt from sales and compensating use tax. See section 528.27 of this Part for exempt purchases of candy and confectionery when purchased with food stamps.

(2) The terms *food* and *food products* as used in this section mean edible commodities whether prepared, processed, cooked, raw, canned or in any other form, which are generally regarded as food. This category includes, but is not limited to:

- | | |
|-----------------------------------|----------------------------|
| meat and meat products | fats, oils and shortenings |
| milk products | condiments |
| cereals and grain products | spices |
| baked goods | sweetening agents |
| vegetables and vegetable products | food preservatives |
| fruits and fruit products | food coloring |
| poultry | frozen dinners |
| fish and seafood | snacks (except candy and |
| frozen entrees and desserts | |
| jellying agents | |

* * *

(3) The phrase *sold for human consumption* means that the items sold are, in their normal use, regarded as being for human consumption. Pet foods, which are packaged, labeled or advertised as such, are not deemed sold for human consumption.

Opinion

Petitioner operates a facility known as "Big Boar Lodge," which provides overnight accommodations for clients. Clients may spend several nights in the lodge while they select various domestic game animals to hunt at the facility. Once selected, the animal is released into the 175 acre preserve where it may be hunted by Petitioner's clients. Petitioner does not charge the client other than for lodging unless the client shoots the animal. All animals shot by the client must be taken by the client. Prices, excluding the separate charges for lodging and other optional services, are determined by the particular species of animal taken by the client. The charge becomes due when the client shoots the animal.

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Petitioner's price for each species of animal represents consideration contracted to be paid for tangible personal property. Petitioner's client is purchasing an animal which becomes the client's property upon being shot and may, at the client's option and for an additional charge, be preserved through taxidermy, butchered for meat, or otherwise disposed of. At the time of purchase by the client, the animal is not an edible commodity as contemplated in section 1115(a)(1) of the Tax Law. See section 528.2(a) of the Sales and Use Tax Regulations. Such a purchase of tangible personal property is subject to sales tax at the rate in effect where the property is transferred to the purchaser.

Any additional charges to Petitioner's client for having the animal processed either by taxidermy or butchering are subject to sales tax pursuant to section 1105(c)(2) of the Tax Law. See section 527.4(d) of the Sales and Use Tax Regulations.

DATED: September 2, 2004

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

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