

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

TSB-A-05(33)S
Sales Tax
September 27, 2005

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S030912B

On September 12, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from Lawrence Lynn, 102-30 66th Road, Apt 8D, Forest Hills, New York, 11375. Petitioner provided additional information pertaining to the Petition on January 5, 2004.

The issue raised by Petitioner is whether the fees charged by Petitioner for the events described below are subject to New York sales and use tax.

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

Petitioner organizes and markets events for singles. The primary function of Petitioner's events is to facilitate dating by providing a forum for single individuals within a specific age range to meet. Petitioner markets the events in the "singles" listing of newspapers. In addition, Petitioner markets the events to his own mailing list of singles within the relevant age range that he has developed from previous events. This is facilitated through the use of postcards, telephone, e-mail and Web page. Engagements and marriages stemming from Petitioner's events are sometimes announced to those on Petitioner's mailing list.

Petitioner's events are held in Queens, Nassau and Suffolk County locations that include restaurants and catering facilities. Those interested in attending Petitioner's events pay on a per event basis; there are no additional fees. The fee for each of Petitioner's events is generally \$15 or \$17. The only revenue Petitioner receives is the fee. Beverages are available at Petitioner's events. The restaurant or catering hall sells these separately. A buffet of food may be made available by the restaurant or catering hall to Petitioner's customers at no additional charge to the customers. Entertainment (most often a disc jockey and occasionally a live entertainer) is normally provided at Petitioner's events.

Petitioner has the following methods for providing a venue for these functions:

- Petitioner guarantees certain gross beverage revenue to the venue operator and agrees to make up any shortfall.

- Petitioner pays a rental fee to the operator in addition to providing a gross revenue guarantee and agreeing to make up any shortfall.

Applicable law and regulations

Section 1105(c) of the Tax Law imposes sales tax upon the receipts from the sale of certain enumerated services.

Section 1105(d)(i) of the Tax Law imposes sales tax upon “The receipts from every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers.”

Section 1105(f)(1) of the Tax Law imposes sales tax upon “Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state.”

Opinion

The primary function of Petitioner’s events is not to provide entertainment or amusement, but to facilitate dating by providing a forum for single individuals within a specific age range to meet. Petitioner, in effect, provides a social networking service. If Petitioner is not providing a social networking service, its charges for admission to a bar, restaurant or similar facility are subject to tax under section 1105(d)(i) of the Tax Law as a “cover, minimum, entertainment or other charge made to patrons or customers.” Similarly, if the charge is primarily for admission to a place of amusement, the admission charge is subject to tax under section 1105(f)(1) of the Tax Law.

Section 1105(c) of the Tax Law imposes sales tax only on receipts from the sale, except for resale, of certain enumerated services. The service provided by Petitioner is not included among such enumerated taxable services. Under the facts presented in this Advisory Opinion, and in view of the nature and function of Petitioner’s events, Petitioner is not charging individuals for entertainment or amusement. See *Jeffrey M. Strank*, Adv Op Comm T&F, December 12, 2002, TSB-A-02(58)S.

Accordingly, the fees charged by Petitioner to individuals for these events are not admission charges subject to sales tax. Petitioner, therefore, is not required to collect sales tax on the fees charged to attend the events described in this Advisory Opinion.

DATED: September 27, 2005

/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.