

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

TSB-A-05(41)S
Sales Tax
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STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S031216A

On December 16, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from Central Parking System of New York, Inc., 360 West 31st Street, New York, New York 10001.

The issue raised by Petitioner, Central Parking System of New York, Inc., is whether the electronic records generated and stored by Petitioner's Ticketech system satisfy the recordkeeping requirements imposed by sections 1135 and 1142-A of the Tax Law and related regulations and eliminate the need to retain hard copies of documents generated.

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

Central Parking Corporation is a publicly traded multinational corporation that provides parking and transportation-related services throughout North America, South America, Europe, and Asia through its wholly owned subsidiary operating companies. Central Parking Corporation and its subsidiaries, including Central Parking System of New York, Inc. (collectively, "Petitioner"), own, operate, and manage parking facilities for their own account, on behalf of third parties pursuant to management agreements, and in cooperation with third parties through various joint venture structures. In addition, Petitioner provides parking-related goods and services such as facilities design; consulting services; transportation (parking shuttle) services; valet and special event parking services; revenue control equipment; parking meter enforcement; highway toll collection; and accounting, collection, and other management services relating to the parking industry. Petitioner currently operates approximately 3,400 parking facilities worldwide containing approximately 1.5 million parking spaces.

Sale of Parking Services in New York

Petitioner currently operates hundreds of parking facilities throughout New York State and a large number of them are located in New York County (i.e., Manhattan). While many parking facilities operated by Petitioner are in stand-alone locations, others are located in or adjacent to commercial facilities, such as hotels, sports arenas, apartment buildings, and commercial office buildings, and government owned and operated facilities, such as airports and municipal buildings. Petitioner operates both surface lots and parking garages and provides parking services by the hour, day, and month.

The Ticketech System

Many of the parking facilities operated by Petitioner employ a Ticketech data processing system to (i) issue tickets, (ii) manage and document the flow of vehicles into and out of the

facility, (iii) calculate the fees due from patrons, and (iv) compile and process accounting records. The Ticketech system consists of one or more computer terminals (which include a keyboard, monitor, and bar code reader/writer), a central processing unit, data storage unit (fixed and removable), and data transmission facilities (dedicated data network or dial-up modem connection).

When a vehicle enters a facility employing a Ticketech system, the parking attendant greets the patron and inputs identifying information into the Ticketech system to facilitate and track the delivery of parking services. The creation of a ticket by the Ticketech terminal requires each vehicle's description and identifying information, including the vehicle's color, manufacturer, body type and license plate number to be entered into the system. After the identifying information is input into the Ticketech system, a blank stock ticket is mechanically fed into the Ticketech terminal for printing.

The Ticketech Documentation

The ticket that is printed by the Ticketech terminal consists of five parts. The first part of the printed ticket is identified as the claim check, which is presented to the patron and then used by the patron to claim his or her vehicle. The claim check indicates (i) the name, address, and telephone number of the parking facility, (ii) the unique and sequentially determined number assigned by the Ticketech system to the ticket (in both Arabic numerals and bar coding), (iii) the license number of the parking facility, (iv) a description of the vehicle, (v) the license plate number of the vehicle, and (vi) the day, date, and time that the vehicle entered the parking facility. The claim check also indicates that the hours of operation and rates for parking at the facility are "as posted."

The second part of the printed ticket is the accounting ticket, which is retained by the attendant for use by the facility's cashier to record the exit time of the vehicle and the payment received from the patron for the parking services. The accounting ticket indicates (i) the name, address, and telephone number of the parking facility, (ii) the unique and sequentially determined number assigned, (iii) the license number of the parking facility, (iv) a description of the parked vehicle, (v) the license plate number of the parked vehicle, (vi) the day, date, and time that the vehicle entered the parking facility, and (vii) a line for the patron's signature and account number (for use if the patron is a monthly patron). The accounting ticket is the record currently retained by Petitioner for a period of three years after the filing of the sales and use tax return reporting the receipt collected by Petitioner.

The third part of the printed ticket is the exit stub, which is retained by the attendant for presentation by the cashier to the patron after payment is made as evidence of payment to exit the parking facility. The exit stub indicates (i) the unique and sequentially determined number assigned, (ii) a description of the parked vehicle, (iii) the license plate number of the parked vehicle, (iv) the day, date, and time that the vehicle entered the parking facility, and (v) a legend informing the patron to present the exit stub to the attendant when leaving the facility.

The fourth part of the printed ticket is the locator stub, which is retained by the attendant and used to note the location of the parked vehicle in the facility for efficient retrieval. The locator stub indicates (i) the unique and sequentially determined number assigned, (ii) a description of the parked vehicle, (iii) the license plate number of the parked vehicle, (iv) the day, date, and time that the vehicle entered the parking facility, and (vii) a blank box in which the location of the vehicle is noted.

The fifth part of the printed ticket is the window check, which is placed on the parked vehicle's front window for identification of the vehicle while it is in the facility. The window check indicates (i) the unique and sequentially determined number assigned, (ii) a description of the parked vehicle, (iii) the license plate number of the parked vehicle, and (iv) the day, date, and time that the vehicle entered the parking facility.

For monthly parking patrons, parking services are provided by contract and the fee collected on a periodic basis is determined without regard to the amount of time that the patron's vehicle is present at Petitioner's parking facility during the period. The vehicles operated by monthly parking patrons are identified by a sticker affixed to the vehicle (usually on the vehicle windshield or side window) designating the unique number assigned to the monthly parking patron by Petitioner. When a monthly parking patron enters the parking facility, the parking attendant will enter the unique number assigned to the parking patron, which the Ticketech system will associate with the patron's account. The documentation produced by the Ticketech system with respect to the monthly parking patron's parking transaction bears a large "M" on the printed ticket to designate the transaction as a monthly parking transaction and associate the transaction with the monthly parking patron's contract.

The Ticketech System Transaction

When a patron returns to the parking facility, the claim check is presented to the cashier. The cashier scans the claim check into the Ticketech system and the attendant is notified to retrieve the patron's vehicle corresponding to the unique and sequentially number assigned to the claim check presented. The patron's exit time is recorded by the Ticketech system at the time that the cashier scans the claim check into the Ticketech system by using the system's "internal clock" to determine and record the time on the electronic record. The Ticketech system then uses the recorded exit time to calculate the amount due for parking services.

In virtually all instances, the fee collected by Petitioner for parking services is determined on a monthly, daily, or hourly basis. For parking services sold on an hourly or daily basis, Petitioner charges the lesser of (i) the hourly fee multiplied by the number of hours during the calendar day that parking services were provided or (ii) the daily parking rate. For example, if the hourly fee for parking services in a particular location is \$15.00 per hour and the daily fee for parking services is \$45.00, Petitioner would collect the hourly rate for the sale of parking services for three or less hours and the daily rate for the sale of parking services for more than

three hours. Although a transaction is created on the Ticketech system for the entry of a monthly parking patron, no daily or hourly fee is calculated by the Ticketech system.

When the cashier receives payment for the parking services, the exit stub is given to the patron who proceeds to the exit area of the facility and awaits his or her vehicle. Upon delivery of the patron's vehicle, the patron surrenders the exit stub to the attendant and exits the facility.

At the facility, a posting informs the patron that the charges for parking include sales tax as a component of that charge. The sales tax is listed as a percentage imposed on the charge for parking services and reflected in the total listed price. The sales tax is not separately stated on any document provided to the patron unless a written receipt is requested.

Ticketech System Security

The Ticketech system incorporates numerous security features to prevent fraud against or theft from Petitioner arising from the delivery of parking services to patrons as well as preventing the theft of a patron's vehicle.

The principal security features of the Ticketech system are (i) the simultaneous creation of an electronic record corresponding to each five-part paper ticket that is printed and (ii) the inability of any person on-site or in parking operations to alter or delete either the five-part paper ticket or the corresponding electronic record once they are created. These security features ensure that tickets cannot be altered so as to facilitate their reuse on multiple vehicles, or cancelled in the Ticketech system and used by employees to obtain parking revenue. To further facilitate accounting for tickets and revenue, the Ticketech system only issues tickets in consecutive order. The creation of the five-part paper ticket by the Ticketech system is based on the electronic record in the Ticketech system. Once the electronic record is created by the Ticketech system and the five-part paper ticket printed, the electronic record cannot be altered or deleted. When the patron returns to claim his or her vehicle, the exit time and charge imposed for the parking services are added to the electronic record.

Another security feature of the Ticketech system is the inability to produce duplicates of the printed five-part paper ticket. This feature prevents the theft of vehicles and the theft of parking revenues through the reuse of tickets.

Ticketech System Records

Although the Ticketech system cannot print duplicates of the five-part paper ticket, it can produce activity reports and summary reports listing the information contained in fifteen electronic records on a single 8½" x 11" piece of paper in a similar layout to the accounting ticket. The information includes (i) the name, address, and telephone number of the parking facility, (ii) the unique and sequentially determined number assigned by the Ticketech system to the ticket (in Arabic numerals only), (iii) the license number of the parking facility, (iv) a

description of the parked vehicle, (v) the license plate number of the parked vehicle, (vi) the day, date, and time that the vehicle entered the parking facility, (vii) the day, date, and time that the vehicle exited the parking facility, and (viii) the amount of revenue collected for the delivery of parking services on the transaction or an indication that the ticket is for a monthly parking patron.

All of the information contained in the Ticketech system is stored at the parking facility and also transmitted on a daily basis to an off-site location for storage in a central repository maintained by Petitioner. The information is stored in a secure manner so that the electronic records, once created, cannot be altered by any person. Furthermore, all of the information contained in the Ticketech system is continuously backed up and the backup of the information is maintained at a separate facility from the location at which the central files are kept. The Ticketech system is periodically tested to ensure that the Ticketech system is functioning properly and that its records are being created in an accurate and secure manner.

Ticket Storage

To comply with the recordkeeping requirements of sections 1135 and 1142-A of the Tax Law, Petitioner currently stores the accounting ticket portion of each printed five-part paper ticket in hard copy at the facility where it was created. These records are stored for a period of three years from the later of the due date or the date on which the sales and use tax return reporting the sale of parking services represented by the accounting ticket was filed. Petitioner is currently storing thousands of boxes containing the accounting tickets in its parking facilities.

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:

* * *

(c)(6) Providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles

Section 1135 of the Tax Law provides, in part:

(a) (1) Every person required to collect tax shall keep records of every sale or amusement charge or occupancy and of all amounts paid, charged or due thereon and of the tax payable thereon, in such form as the commissioner of taxation and finance may by

regulation require. Such records shall include a true copy of each sales slip, invoice, receipt, statement or memorandum upon which subdivision (a) of section eleven hundred thirty-two requires that the tax be stated separately.

* * *

(g) Such records shall be available for inspection and examination at any time upon demand by the tax commission or its duly authorized agent or employee and shall be preserved for a period of three years, except that the tax commission may consent to their destruction within that period or may require that they be kept longer. Such records may be kept within the meaning of this section when reproduced on any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduced the original record.

Section 1142-A(b) of the Tax Law provides, in part:

Every person described in subdivision (a) of this section shall keep records in addition to the records required to be kept by section eleven hundred thirty-five of this article. Such additional records shall include copies of each ticket or other documentation given to each purchaser of such service, which such person shall be required to furnish to each such purchaser at the initiation of such parking, garaging or storing, except as hereinafter provided. Such tickets or other documentation shall be consecutively numbered or issued by a computer, in a manner approved by the commissioner, and shall indicate the date and time of entry of the motor vehicle. The date and time of exit of such motor vehicle shall also be indicated on the ticket or other documentation (or the copy thereof) retained by such person described in subdivision (a) of this section except where such person charges a flat fee for any such service based on time elapsed, the price for such service is indicated on the ticket or other memorandum as a flat fee and it is not the practice of such person to date- and time-stamp the ticket or other documentation when the purchaser pays for such service for which a flat fee is charged. In the case of a monthly or longer term purchaser to whom such a ticket or other documentation is issued, such ticket or other documentation shall include such purchaser's (1) printed name and signature or (2) identification number assigned to such purchaser by such person required to collect tax. Provided, however, that where such person required to collect tax sells such service on a monthly or longer term basis and issues a computer access card or a prenumbered decal or tag to the purchaser, then such person shall not be required to give such a ticket or such other documentation to any such purchaser to whom such card, decal or tag has been issued, or to retain copies thereof. Such person required to collect tax shall retain a list containing the name, address and signature of each monthly or other longer-term purchaser of service, the valid period of such monthly or longer-term service, and the number of authorized vehicles entitled to such parking services, without regard to whether a ticket or other documentation is issued to such purchaser.

Section 538.2(b)(1) of the Sales and Use Tax Regulations provides, in part:

A parking facility operator may apply to the department for an exemption from complying with some or all of the provisions of this Part and section 1142-A of the Tax Law. The application shall be submitted on the form prescribed by the department for such purpose to the Audit Division-Sales Tax Bureau, Building 9, W. A. Harriman Campus, Albany, NY 12227. The operator shall keep a copy of such application and any response from the department regarding the application, for a period of at least three years, as described in section 538.4(g) of this Part, as part of the additional records required to be kept by section 1142-A of the Tax Law and this Part. . . .

Section 538.3 of the Sales and Use Tax Regulations provides, in part:

(a) Section 1142-A(b) of the Tax Law requires, with certain exceptions described in subdivision (c) of this section, each parking facility operator to furnish a ticket or other documentation to each purchaser of parking services at the time of the initiation of the service. The parking facility operator is required to keep each original ticket or other documentation issued, or a true copy of each such ticket or other documentation, containing all the information required in subdivision (b) of this section, separated by day, as part of the additional records required to be kept by this Part and section 1142-A of the Tax Law.

(b) The ticket or other documentation (hereafter referred to collectively as the ticket) required to be furnished to the purchaser must conform to the following requirements.

(1) Tickets must be consecutively numbered in a manner approved by the department. A ticket number may not be used more than once in a calendar year at a parking facility unless the number has a letter prefix or suffix which readily distinguishes a ticket on which the number appears from any other ticket with the same number. . . . In the alternative, the ticket may be issued by a computer in a manner approved by the department. The proposed numbering scheme or the alternative computer issuance procedure must be submitted by the parking facility operator for approval by the department to the Audit Division - Sales Tax Bureau, Building 9, W.A. Harriman Campus, Albany, NY 12227, at least 20 days prior to use by the parking facility operator of the numbering scheme or computer issuance procedure. The operator is required to keep for a period of at least three years, as described in section 538.4(g) of this Part, a copy of the submissions to the department and the department's approval or denial, as part of the additional records required to be kept by this Part and section 1142-A of the Tax Law. . . .

(2) The part of every ticket given to a customer and the part of every ticket required to be kept by the operator must each indicate the complete address of the parking facility issuing the ticket and the operator's full name.

(3) The part of every ticket given to a customer and the part of every ticket required to be kept by the operator must each indicate the date and time of entry of the motor vehicle.

(4) The part of every ticket given to a customer and the part of every ticket required to be kept by the operator must each also indicate the date and time of exit of the motor vehicle, unless the parking facility operator charges a flat fee for the parking service to which the ticket relates and the following conditions are met:

(i) the charge for flat fee parking is based on time elapsed;

(ii) the amount of such charge is indicated on the ticket and is clearly indicated to be a flat fee; and

(iii) it is not the practice of the parking facility operator to date and time-stamp the ticket when the purchaser pays for the parking service for which a flat fee is charged.

(5) In the case of a monthly or longer term purchaser to whom a ticket is issued, the ticket must also include the purchaser's printed name and signature. In lieu of the purchaser's printed name and signature being set forth on such a ticket, an identification number assigned to the monthly or longer term purchaser by the parking facility operator must be indicated on the ticket.

(c) (1) Where a parking facility operator sells parking services on a monthly or longer term basis and issues a computer access card or a prenumbered decal or tag to the purchaser, the parking facility operator will not be required to give the ticket described in subdivision (b) of this section to a purchaser to whom such a card, decal or tag has been issued, or to keep a copy of such ticket. However, the operator is required to obtain approval from the department to use such a numbering scheme on such access card, decal or tag by submitting the scheme at least 20 days prior to use, to the address set forth in paragraph (b)(1) of this section. The operator shall keep a copy of such submission to the department and the department's denial or approval, for a period of at least three years, as described in section 538.4(g) of this Part, as part of the additional records required to be kept by this Part and section 1142-A of the Tax Law. . . .

(2) Every parking facility operator which sells parking services on a monthly or longer term basis must, whether or not a ticket is issued to the purchaser, keep as part of

the additional records required to be kept by this Part and section 1142-A of the Tax Law a list containing the following:

- (i) the name, address and signature of each purchaser of any parking service on a monthly or longer term basis;
- (ii) any identification number assigned to any such purchaser, as described in paragraph (b)(5) of this section, or the number of any access card, decal or tag described in paragraph (l) of this subdivision;
- (iii) the valid period during which such monthly or longer term service is provided to each such purchaser (e.g., one month, six months, one year, etc.);
- (iv) the number of authorized vehicles entitled to any such monthly or longer term service;
- (v) the address of the parking facility where such purchaser parks, garages or stores the purchaser's vehicle;
- (vi) the rate charged each such purchaser for monthly or longer term service as well as the time period (day only, night only, weekend only, etc.) such purchaser is permitted to park, garage or store the purchaser's vehicle; and
- (vii) whether such purchaser is wholly tax exempt, exempt only from the additional eight percent Manhattan parking tax or fully taxable.

(3) Provided, however, where a purchaser of parking services on a monthly or longer term basis submits an application for such services to the parking facility operator and each such application from every such purchaser contains all of the information required in paragraph (2) of this subdivision, such applications together will be deemed to constitute the list required in paragraph (2) of this subdivision. The parking facility operator is required to keep every such application for a period of at least three years from the later of the due date or date of filing of the latest sales and use tax return to which an application relates, as part of the additional records required to be kept by this Part and section 1142-A of the Tax Law.

Section 538.4 of the Sales and Use Tax Regulations provides, in part:

(a) General. As part of the additional records required to be kept by section 1142-A of the Tax Law, every parking facility operator must keep, separately for each parking facility operated by such operator, and make available to the department upon request, the following information:

- (1) the parking facility name;
- (2) the parking facility address;
- (3) the license number of such facility, if applicable;
- (4) the days and hours of operation for such facility; and
- (5) the licensed capacity of such facility, if licensed.

(b) Daily records. As part of the additional records required to be kept by section 1142-A of the Tax Law, every parking facility operator must keep on a daily basis, separately for each parking facility, records that adequately provide the following information:

- (1) the day of the week and the date covered by the daily record;
- (2) the beginning and ending numbers of tickets issued on such day and date;
- (3) the total number of tickets issued;
- (4) the sales tax rates applicable;
- (5) the total number of transactions and amount of receipts from taxable sales of parking services;
- (6) the total number of transactions and amount of receipts from all sales of parking services;
- (7) the total number of transactions and value of parking services furnished without charge (e.g., coupons, scrip, voids, others);
- (8) the total number of transactions and amount of receipts from sales of parking services paid for by a person other than the person whose vehicle is parked, garaged or stored (such as merchant validation and payment of a customer's parking ticket);
- (9) the total amount of receipts from prepaid sales of parking services (e.g., coupons, scrip, miscellaneous);
- (10) the total number of transactions and amounts of receipts from sales of monthly or longer term parking services and whether wholly tax exempt, exempt only from the additional eight percent Manhattan parking tax or fully taxable;

(11) the total amount of receipts from sales of tangible personal property and services other than parking services (e.g., car washing, maps, oil, etc.) and the nature of such sales; and

(12) the total tax liability on receipts from all sales of tangible personal property and services.

(c) Monthly records. As part of the additional records required to be kept by section 1142-A of the Tax Law, each parking facility operator must also keep a monthly summary of the information contained in each daily record for that month, as such daily record is described in subdivision (b) of this section. Such monthly record must be kept separately for each parking facility and in a manner that adequately provides the department with the ability to reconcile such monthly record with, and trace all information on such monthly record back to, the daily records and the tickets and other original source documents required to be kept as additional records under section 1142-A or this Part or as otherwise required to be kept by law or regulation.

(d) The daily and monthly records described in subdivisions (b) and (c) of this section must each also show the name, address and if applicable, the license number, of the parking facility to which each such record is applicable.

(e) In lieu of keeping the records required to be kept by subdivision (b) or (c) of this section in written form, a parking facility operator may elect to keep such records (or a portion thereof), with all the specificity set forth in subdivision (b) or (c) of this section, in machine-sensible form in the manner that a taxpayer which keeps or processes records on an automated data processing system, as such term is used in Part 39 of this Title, is required to keep records in machine-sensible form as prescribed in Part 39 of this Title. The provisions of Part 39 of this Title shall apply for purposes of the records authorized to be kept by this subdivision so far as such provisions can be made applicable to the records authorized to be kept by this subdivision with such limitations as set forth in this Part and such modifications as may be necessary in order to adapt such language to the records authorized to be kept by this subdivision. Such provisions shall apply with the same force and effect as if the language of such provisions had been incorporated in full into this section and had expressly referred to the records authorized to be kept by this subdivision, except to the extent that any provision is either inconsistent with a provision of this Part or is not relevant to the records authorized to be kept by this subdivision. Any records kept in machine-sensible form pursuant to this subdivision are part of the additional records required to be kept by section 1142-A of the Tax Law. See, also, Part 2402 of this Title for taxpayer record retention formats.

(f) Every parking facility operator shall also keep its schedule of rates, and changes therein, for each parking facility, separately, showing the prices charged for

hourly, daily, weekly and monthly, or other applicable period, parking or storage of motor vehicles and all other rates charged therefor, including any special rate applicable to a limited period of time or to special circumstances. Whenever a change of rates shall occur, the parking facility operator shall be required to keep any previous schedule of rates as well as the new schedule of rates, for each parking facility, separately. A copy of each rate schedule, as required to be filed with the Commissioner of Consumer Affairs of the City of New York under section 2-161 (g)(2)(iv) of Subchapter Q of Title 6 of the Regulations of the City of New York, must also be kept by each parking facility operator.

(g) Any records required or authorized to be kept by this Part or required to be kept in accordance with the Regulations of the City of New York cited herein must be kept by the parking facility operator for a period of at least three years from the due date of the latest sales and use tax return to which they relate or from the date of filing such return, if later.

(h) Any records required to be kept by section 1142-A of the Tax Law or this Part must be made available to the department upon request.

Section 2402.1(a) of the Procedural Regulations provides, in part:

Taxpayer's option to choose. Notwithstanding any other provision of this Title and unless specifically provided for otherwise by law, *any record that is required to be retained by a taxpayer may be retained pursuant to the provisions of this Part in either hard-copy format or electronic format (or both) at the discretion of the taxpayer. . . .* (Emphasis added)

Section 2402.2 of the Procedural Regulations provides, in part:

(b) General. (1) Electronic records meeting the requirements of this Part have the same force and effect as those taxpayer records that are produced or retained by non-electronic means and will be treated by the Department of Taxation and Finance with the same degree of confidentiality as that accorded any other records of the taxpayer.

(2) For purposes of the Tax Law, any other matter under the jurisdiction of the commissioner, and this Title, any record that a taxpayer is required to retain in its original form or as a duplicate original, actual reproduction, exact copy, true copy, or the like, will be considered retained in such form if the electronic version accurately reflects the required information and is accessible to the department, as provided in subdivision (c) of this section.

(c) Retaining electronic records. (1) A taxpayer must retain electronic records that accurately reflect the information that is required to be set forth in the records. The electronic records, either alone or in conjunction with the taxpayer's other records, must

contain sufficient information in order to support and verify all of the entries that are made on the taxpayer's tax returns or informational reports, and to determine the proper taxes or other amounts that may be due. These records, either alone or together, must be reconcilable to the taxpayer's reporting periods and must create an audit trail designed so that the details underlying each of the entries made on the taxpayer's returns or reports can be identified and made available to the department upon its request.

(2) Electronic records must be dated, legible (e.g., if the record is scanned), and maintained and preserved in such a manner so as to disclose upon retrieval, in readily accessible and verifiable detail, the basis for and accuracy of the information reported (or required to be reported) to the department. The electronic records should also be maintained in a secure storage environment. Failure to maintain adequate records, or make them available to the department for review, does not relieve a taxpayer of its obligations under the Tax Law, any other matter under the jurisdiction of the commissioner, or this Title. . . .

* * *

(4) Electronic records must be accessible to the department for the entire periods for which the records are required to be retained. Accordingly, a taxpayer that elects to produce or store any information by electronic means that evidences any act, transaction, occurrence, event, or other activity (or any portion thereof) must retain and make such electronic records available to the department. For example, if a taxpayer elects to effect a transaction or capture information relating thereto by electronic means, the taxpayer must keep the electronic record and make it available to the department upon its request. Generally, records must be retained for as long as their contents are material to any period open or extended pursuant to statute, or in any action or proceeding pending before the Department of Taxation and Finance, or in any judicial action or proceeding.

Opinion

Petitioner owns, operates, and manages parking facilities for its own account, on behalf of third parties pursuant to management agreements, and in cooperation with third parties through various joint venture agreements. In addition, Petitioner provides parking related goods and services such as facilities design; consulting services; transportation (parking shuttle) services; valet and special event parking services; revenue control equipment; parking meter enforcement; highway toll collection; and accounting, collection, and other management services relating to the parking industry.

Many of the parking facilities operated by Petitioner employ a Ticketech data processing system to issue tickets, manage and document the flow of vehicles into and out of the facility, calculate the fees due from patrons, and compile and process accounting records. The Ticketech

system consists of one or more computer terminals, a central processing unit, data storage unit, and data transmission facilities.

The Ticketech system incorporates numerous security features to prevent fraud against or theft from Petitioner arising from the delivery of parking services to patrons as well as preventing the theft of a patron's vehicle. The Ticketech system simultaneously creates an electronic record corresponding to each five-part paper ticket that is printed and no one on-site or in parking operations is able to alter or delete either the five-part paper ticket or the corresponding electronic record once it is created.

The information captured by both the electronic record and paper ticket generated by the Ticketech system includes (i) the name, address, and telephone number of the parking facility, (ii) the unique and sequentially determined number assigned by the Ticketech system to the ticket (in Arabic numerals only), (iii) the license number of the parking facility, (iv) a description of the parked vehicle, (v) the license plate number of the parked vehicle, (vi) the day, date, and time that the vehicle entered the parking facility, (vii) the day, date, and time that the vehicle exited the parking facility, and (viii) the amount of revenue collected for the delivery of parking services on the transaction or an indication that the parking services were provided to a monthly patron.

All of the information contained in the Ticketech system is stored at the parking facility and also transmitted on a daily basis to an off-site location for storage in a central repository maintained by Petitioner. The information is stored in a secure manner so that the electronic records, once created, cannot be altered by any person.

Petitioner is currently storing thousands of boxes containing the accounting tickets in its parking facilities. Petitioner contends that electronic recordkeeping is permitted by law, and applies to the recordkeeping requirements of section 1142-A of the Tax Law. Petitioner also contends that its Ticketech system captures all necessary information to satisfy the recordkeeping requirements of the Tax Law.

Section 2402.2 of the Procedural Regulations, which pertains to electronic record retention by taxpayers, was intended to, and does by its terms, apply broadly to any record that a taxpayer is required to retain in its original form. A record will be considered retained in its original form if the electronic version accurately reflects the required information and is accessible to the Tax Department. See section 2402.2(b)(2) of the Procedural Regulations. Thus, so long as Petitioner's electronic records contain the information prescribed by the relevant provisions of the Tax Law and Sales and Use Tax Regulations, and by the relevant TSB-Ms, and administrative and judicial rulings, and satisfy the requirements of Part 2402 of the Procedural Regulations, Petitioner is not prohibited from maintaining such records solely in an electronic format.

It appears that Petitioner's Ticketech system captures the information required to be maintained by sections 538.3(b)(2), (3), (4) and (5) of the Sales and Use Tax Regulations. Assuming that the paper tickets and other records generated by Petitioner satisfy the recordkeeping requirements of sections 1135 and 1142-A of the Tax Law, and sections 538.3 and 538.4 of the Sales and Use Tax Regulations, the electronic reports described in this Opinion will satisfy the recordkeeping requirements of sections 1135 and 1142-A if they reproduce the information contained in the paper tickets and other records. See section 2402.2 of the Procedural Regulations. However, it cannot be conclusively determined in this Opinion whether the specific paper and electronic records generated and stored by Petitioner's Ticketech system satisfy all the recordkeeping requirements of the Tax Law and related regulations (particularly section 538.4 of the Sales and Use Tax Regulations).

It should be noted that section 538.3(b)(1) of the Sales and Use Tax Regulations requires parking lot operators electing to use computer generated parking tickets to submit their proposed computer procedures to the Audit Division of the Tax Department for approval. In addition, section 538.2(b)(1) of the Sales and Use Tax Regulations provides that parking lot operators may apply to the Audit Division for an exemption from complying with some or all of the provisions of Part 538 of the Regulations and section 1142-A of the Tax Law. Therefore, Petitioner should contact the Audit Division of the Department for further guidance on whether the specific electronic records generated and stored by Petitioner's Ticketech system satisfy the recordkeeping requirements of the Tax Law and related regulations before destroying existing hard copy parking tickets or eliminating the need to retain such tickets for prospective transactions.

When electronic records are retained as the primary source documentation or when electronic records are used to prepare sales and use tax returns, then these records, upon request, must be provided to the Tax Department. See section 1135(g) of the Tax Law; section 538.4(h) of the Sales and Use Tax Regulations and section 2402.2(c) of the Procedural Regulations.

DATED: October 27, 2005

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