

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

TSB-A-05(5)S
Sales Tax
February 3, 2005

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S030814A

On August 14, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from United States Golf Association, Inc., Golf House - 77 Liberty Corner Road, Far Hills, New Jersey, 07931. Petitioner, United States Golf Association, Inc., provided additional information pertaining to the Petition on May 26, 2004.

The issues raised by Petitioner are:

1. Whether Petitioner, as the recipient of admissions to its golf tournaments held in New York State, is a person required to collect the sales tax on such admissions and whether the inclusion of other services alters the taxability of such admissions.
2. Whether receipts from various types of sales made by Petitioner occurring prior to or during the United States Open Championship golf tournament (including mail order sales and direct sales where orders are solicited and taken in New York State) where delivery occurs in New York State are subject to the sales and use tax.
3. Whether the separate statement of sales and use tax on a receipt may be made on an item-by-item basis.

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

Petitioner is the governing body of the game of golf in the United States. Petitioner's purpose is to preserve and promote the best interests and true spirit of the game of golf throughout the United States. Petitioner has been issued an exempt organization certificate by the Tax Department pursuant to section 1116(a)(4) of the Tax Law.

Petitioner conducts the United States Open Championship (US Open) on an annual basis. Petitioner will be conducting several US Opens in New York State in the coming years.

Petitioner wishes to ascertain whether it is required to collect sales tax on any of the following charges made during the course of conducting the US Open.

Admissions

Petitioner sells US Open admission tickets, in advance, that grant spectators a revocable license to enter the host course and access to the designated public areas during the three days of practice rounds and four days of championship play that comprise the US Open. In addition to admission to the US Open, the price paid for an admission ticket also includes unreserved parking, as available, for one automobile and one copy of the official US Open program

produced by Petitioner. A “season” admission ticket grants entry for the duration of the US Open (three days of practice rounds and four days of championship play) and includes one US Open program. A “daily” admission ticket grants entry to the US Open for a single day and does not include a program. All ticket holders, whether daily or season, as well as volunteers, receive a “pairing sheet” listing the players and their start time for each day of the US Open.

In addition to the individual admissions to the US Open, Petitioner also sells hospitality packages affording groups admission to the US Open. All of the packages include the exclusive use of a hospitality table or tent, as applicable, identification of the package purchaser (the client) on the client's hospitality table or tent, admission tickets to the US Open (including parking, programs, and pairing sheets), and the opportunity to purchase dual-logo merchandise bearing the client's logo and the official US Open logo. The specific details of each package, including the quantity and nature of the items included, vary according to the identity of the package purchased as described below. (The description below is representative of packages offered at previous US Opens.)

Hospitality Tent Packages

The highest level of the hospitality tent package typically includes the exclusive use by the client of a 40' x 40' hospitality tent located on the host course's facilities and approximately two minutes walking distance from the 18th fairway of the golf course on which the US Open is conducted. The tent typically has seating for 80 people and includes lighting, electrical, local telephone, regular commercial cable television, and air-conditioning services. Television sets with access to commercial network and cable television broadcasts (not closed-circuit television) and a computer-scoring terminal are provided so that play can be monitored from the tent. Clients and attendees cannot view golf play live or watch on closed-circuit television from the inside of a tent at any venue. This package also entitles the client's attendees to access a landscaped exterior patio area with tables, chairs, and sun umbrellas. Also included with this package are 125 admission tickets to the host course for each day of the US Open, 40 preferential parking passes for each day of the US Open, 435 copies of the official US Open program, 125 pairing sheet listings of players for each day of the US Open, the right to play golf for eight people on each day of the US Open on a specially designated golf course at the host course (not the same course on which the US Open is played) and the right to play golf for four people, several months before the US Open, on the golf course on which the US Open is played, the opportunity to purchase dual-logo merchandise bearing the client's logo and the US Open logo, and the opportunity to purchase 75 additional admission tickets. No food or beverages are provided by Petitioner with the hospitality tent packages. Hospitality tent clients desiring food or beverage service may purchase catering services separately (see *Catering Services*, below).

Although all of the types of hospitality tent packages at the most recent US Open held in New York include the same items provided with the above described package, the lower level packages are more modest with respect to the nature and size of the tent and the other items included with the package. In certain limited instances, a package affords the client the use of a room within the host course's clubhouse facilities. A lower level package may include the exclusive use of one-half of a tent providing 30' x 30' of space located on the host course's

facilities somewhat more than two minutes walking distance from the golf course on which the US Open is played. Such a package typically has seating for 40 people and includes lighting, electrical, telephone, commercial cable television as described above, and air-conditioning services as well as television sets as described above and a computer-scoring terminal. With respect to these packages also, clients and attendees cannot view golf play live or watch on closed circuit television from the inside of a tent at any venue. These packages also provide access to an exterior patio area and include as few as 60 admission tickets to the host course for each day of the US Open, 20 preferential parking passes for each day of the US Open, 210 copies of the official US Open program, 60 pairing sheet listings of players for each day of championship play, the right to play golf for two people several months before the US Open, on the golf course on which the US Open is played, the opportunity to purchase dual-logo merchandise bearing a client's logo and the US Open logo, and the opportunity to purchase 40 additional admission tickets.

No food or beverages are provided with any of the hospitality tent packages. All hospitality tent package clients desiring food or beverage service purchase food and catering services separately through a caterer (hereinafter "Caterer"). Such catering services are not provided or billed by Petitioner. Hospitality tent package clients may choose to purchase food and drink through Caterer, or not, but are not required to do so. In all cases, clients have access to and use of the area designated as their hospitality tent at all times during the duration of the US Open including after hours when tournament play has ended for the day.

Hospitality Table Packages

Like the hospitality tent packages, the hospitality table packages at the US Open afford each client the exclusive use of an area on the host course's facilities. However, rather than the use of a tent, the client is granted the exclusive use of a single table in a limited access tent containing the tables of other table package clients. In certain instances, the tables are placed in a room within the host course's clubhouse facilities. The common tent housing the hospitality tables have all of the amenities provided with the hospitality tent packages, including lighting, electrical, local telephone, cable television, and air-conditioning services as well as television sets and a computer-scoring terminal. Clients cannot watch golf play live or on closed-circuit television from the inside of a tent at any venue.

The hospitality table packages will typically provide seating for 10 people and also include 12 admission tickets to each practice and championship round, four preferential parking passes for each day of the US Open, 42 copies of the official US Open program, 12 pairing sheet listings of players for each day of the US Open and the opportunity to purchase dual-logo merchandise bearing a client's logo and the US Open logo. The hospitality table packages typically do not provide the right to play golf at the host course either prior to or during the US Open, or the right to purchase additional admission tickets.

The hospitality table package clients may contract separately with Caterer for food and beverage services, or choose not to purchase catering service, as is the case with the hospitality

tent packages. Alternatively, Petitioner's charges for the hospitality table packages may include food and beverage service, consisting of breakfast, lunch, hors d'oeuvres, and full bar service.

Concession Stand Sales of Food and Beverages

Petitioner contracts with third parties to erect temporary food service facilities throughout the Host Course for the sale of refreshments to the US Open spectators. Petitioner contracts with an independent concessionaire (Concessionaire), who is not an organization exempt from sales tax pursuant to section 1116(a) of the Tax Law, to operate the food concessions. The food concession stands serve take-away prepared items such as sandwiches, "finger" snack food, and beverages. The Concessionaire is the legal entity making all of the sales at the food concessions except for the sales of alcoholic beverages. Petitioner is the legal entity making the sales of alcoholic beverages through the Concessionaire, which acts on behalf of Petitioner.

Catering Services

Petitioner contracts with an independent caterer to provide catering services at the US Open (Caterer). Pursuant to that agreement, Caterer separately contracts with the hospitality package clients for the provision of food and beverage services. Caterer is the legal entity making all sales of food and beverages to the package clients, except for sales of alcoholic beverages. To the extent that Petitioner includes the provision of food and beverages in its charges to the table package clients, Petitioner purchases the food and beverages, other than alcoholic beverages, from Caterer for delivery to the table package clients' attendees and pays appropriate sales and use tax to the Caterer on the food and beverages.

Concession Stand Sales of Clothing, Programs, and Souvenirs

Petitioner has temporary retail outlets erected throughout the host course for the sale of US Open clothing, programs, and souvenirs to the US Open spectators (Souvenir Concessions). Petitioner operates the Souvenir Concessions and is the legal entity making sales at the Souvenir Concessions.

Mail Order Sales of Clothing, Programs, and Souvenirs

Petitioner carries on four types of mail-order merchandise sales activity in connection with the conduct of the US Open.

Catalog Sales

Petitioner may be the legal entity making the catalog sales. In such case, months before the US Open and for as long as inventory permits, Petitioner would sell US Open clothing, programs, and souvenirs via telephone, mail-order, and Internet solicitations. Order processing and fulfillment services for the mail order sales would be provided by a third-party operating from its facilities in Minnesota.

Publication Sales

In addition to the catalog sales of US Open merchandise, Petitioner also sells golf-related publications and other related items such as rule-books via telephone and mail order solicitations (publication sales). Orders for publication sales are processed by Petitioner's staff in New Jersey and are filled by either Petitioner's staff in New Jersey or drop-shipped by the manufacturer.

Corporate Sales

Beginning several months in advance of each US Open, Petitioner holds three or four information sessions at the host course and Petitioner's headquarters in New Jersey to provide package clients with detailed information regarding the logistics of the upcoming US Open and the packages and certain rules, regulations, and procedures relating to the US Open (information sessions). The information sessions typically consist of a luncheon hosted by representatives of Petitioner for the clients. At the information sessions, the clients are provided with informational materials detailing the packages to be made available at the upcoming US Open as well as a corporate gift catalog from which they may view and select souvenir US Open merchandise for provision to their attendees.

Petitioner does not maintain any inventory of the merchandise available through the corporate gift catalog at the host course until immediately prior to the US Open. Petitioner maintains some samples of certain items at the host course prior to the US Open and may occasionally have some samples of certain items on hand at the information sessions.

Petitioner does not solicit orders for the sale of merchandise from the corporate gift catalog at the information sessions. It is Petitioner's policy to request that merchandise orders from the corporate gift catalog be sent to Petitioner by mail or facsimile. Orders may also be placed via the US Open Web site for clients. However, as an accommodation to the clients, Petitioner's representatives may accept orders from the clients for merchandise, which orders are forwarded to Petitioner's administrative offices for processing. Orders are processed by Petitioner's staff and fulfilled by drop-shipment from the manufacturers.

Uniform Sales

Months before the US Open, Petitioner sells US Open uniforms to volunteers engaged to assist in conducting the US Open (uniform sales). The uniform sales are processed by Petitioner's staff and drop-shipped directly from the manufacturer to the volunteer.

Statement of Tax and Pricing Issues

Petitioner and Concessionaire seek to streamline the handling of cash receipts from souvenir and food and beverage concession sales at the US Open because of the extremely large volume of transactions that are anticipated to occur. To this end, Petitioner proposes to sell all items for whole dollar amounts to the greatest extent possible, although some sales may be made using a one-quarter dollar pricing strategy that parallels the whole dollar pricing strategy, in

order to avoid making change and handling coinage, which Petitioner asserts would dramatically decrease the speed at which transactions are processed. To accomplish this streamlining strategy, Petitioner anticipates pricing taxable items including food and beverages at amounts such that when the appropriate sales and use tax is added to the purchase price, the sum of the purchase price plus the applicable sales tax results in a whole dollar amount (or, in some cases, one-quarter dollar amounts) to be collected from the customer. Under this pricing strategy, the price tag on each item of the merchandise sold at the New York US Opens would state the selling price of the merchandise plus applicable sales tax as a single amount and bear the legend "Includes All Applicable Taxes." Pricing for the Concessionaire sales of food and beverages will bear the legend "Price Includes All Applicable Sales Tax" on prominently displayed signs, rather than price tags.

To process sales at the US Open, Petitioner anticipates using cash registers that are capable of separately computing and stating the tax on each item of merchandise sold during a multi-item sale transaction on the receipt created for the customer. For example, a divot tool would have a price tag indicating a \$20 selling price of the merchandise inclusive of sales tax and bearing the legend "Includes All Applicable Taxes." The sale of that item would be listed on the cash register receipt with a merchandise price of \$18.41 and sales tax of \$1.59 (assuming a sales and use tax rate of 8.625%).

Petitioner is concerned that although the whole dollar pricing strategy works well on single-item transactions, when multiple items are sold in a single transaction the rounding involved can result in a total amount due from the customer that does not follow the whole dollar pricing strategy and would require making change. For example, if a customer were to purchase twelve items, ten priced at \$4.00 each and two priced at \$5.00 each, the corresponding merchandise prices exclusive of tax would be \$3.68 and \$4.60 respectively. However, if the tax were computed in the aggregate on such items rather than separately, the total amount that should be collected from the customer would be \$49.97, rather than \$50.00, which would require the making of change. To avoid this result, Petitioner plans to program the registers to calculate the appropriate tax on an item-by-item basis rather than on an aggregate basis.

Applicable law and regulations

Section 1101(d) of the Tax Law provides, in part:

When used in this article for purposes of the tax imposed under subdivision (f) of section eleven hundred five, the following terms shall mean:

* * *

(2) Admission charge. The amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor.

(3) Amusement charge. Any admission charge, dues or charge of roof garden, cabaret or other similar place.

* * *

(9) Patron. Any person who pays an amusement charge or who is otherwise required to pay the tax imposed under such subdivision (f) of section eleven hundred five

(10) Place of amusement. Any place where any facilities for entertainment, amusement, or sports are provided.

(11) Recipient. Any person who collects or receives or is under a duty to collect an amusement charge.

Section 1105 of the Tax Law provides, in part:

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

* * *

(d) (i) 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 (except those receipts taxed pursuant to subdivision (f) of this section):

(1) in all instances where the sale is for consumption on the premises where sold;

(2) in those instances where the vendor or any person whose services are arranged for by the vendor, after the delivery of the food or drink by or on behalf of the vendor for consumption off the premises of the vendor, serves or assists in serving, cooks, heats or provides other services with respect to the food or drink; and

(3) in those instances where the sale is made through a vending machine that is activated by use of coin, currency, credit card or debit card (except the sale of drinks in a heated state made through such a vending machine) or is for consumption off the premises of the vendor, except where food (other than sandwiches) or drink or both are (A) sold in an unheated state and, (B) are of a type commonly sold for consumption off the premises and in the same form and condition, quantities and packaging, in establishments which are food stores other than those principally engaged in selling foods prepared and ready to be eaten.

* * *

(f) (1) 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, except charges for admission to race tracks, boxing, sparring or wrestling matches or exhibitions which charges are taxed under any other law of this state, or dramatic or musical arts performances, or live circus performances, or motion picture theaters, and except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools. For any person having the permanent use or possession of a box or seat or a lease or a license, other than a season ticket, for the use of a box or seat at a place of amusement, the tax shall be upon the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by the holder, licensee or lessee, and shall be paid by the holder, licensee or lessee.

Section 1116 of the Tax Law provides, in part:

Exempt organizations

(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

* * *

(4) Any corporation, association, trust, or community chest, fund, foundation, or limited liability company, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, (except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

* * *

(b) Nothing in this section shall exempt:

(1) retail sales of tangible personal property by any shop or store operated by an organization described in paragraph (4), paragraph (5) or paragraph (6) of subdivision (a) of this section;

(2) sales of food or drink in or by a restaurant, tavern or other establishment operated by an organization described in paragraph (1), paragraph (4), paragraph (5) or paragraph (6) of subdivision (a) of this section, other than sales exempt under paragraph (ii) of subdivision (d) of section eleven hundred five, from the taxes imposed hereunder, unless the purchaser is an organization exempt under this section;

(3) sales of the service of providing parking, garaging or storing for motor vehicles by an organization described in paragraph (4) or paragraph (5) of subdivision (a) of this section 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; . . .

* * *

(d) (1) Except as provided in paragraph (2) of this subdivision, any admissions all of the proceeds of which inure exclusively to the benefit of the following organizations shall not be subject to any of the taxes imposed under subdivision (f) of section eleven hundred five: (A) an organization described in paragraph (4), (5) or (6) of subdivision (a) of this section; . . .

(2) The exemption provided under paragraph (1) of this subdivision shall not apply in the case of admissions to: (A) Any athletic game or exhibition unless the proceeds shall inure exclusively to the benefit of elementary or secondary schools or unless in the case of an athletic game between two elementary or secondary schools, the entire gross proceeds from such game shall inure to the benefit of one or more organizations described in paragraph (4) of subdivision (a) of this section; . . .

Section 1132(a)(1) of the Tax Law provides:

Every person required to collect the tax shall collect the tax from the customer when collecting the price, amusement charge or rent to which it applies. If the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price, amusement charge or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him. The tax shall be paid to the person required to collect it as trustee for and on account of the state.

Section 1137 of the Tax Law provides, in part:

(a) Every person required to file a return . . . whose total taxable receipts, amusement charges and rents are subject to the tax imposed pursuant to subdivisions (a), (c), (d), (e) and (f) of section eleven hundred five of this article shall, at the time of filing such return, pay to the tax commission the total of the following:

(i) Four and one quarter percent¹ of the total of all receipts, amusement charges and rents subject to tax under this article, and if any of such receipts, amusement charges and rents are subject to local tax imposed pursuant to article twenty-nine of this chapter, an additional percentage of the total thereof equal to the percentage rate of such local tax;

* * *

(iii) All moneys collected by such person, purportedly as tax imposed by this article or pursuant to article twenty-nine, with respect to any receipt, amusement charge or rent not subject to tax, and all moneys collected with respect to any receipt, amusement charge or rent subject to tax, purportedly in accordance with a schedule prescribed by the tax commission but actually in excess of the amount stated in such schedule as the amount to be collected.

Section 527.8 of the Sales and Use Tax Regulations provides, in part:

Sale of food and drink.

(a) Imposition. Sales tax is imposed on the receipts, including any cover, minimum, entertainment or other charge, from every sale of beer, wine or other alcoholic beverages and food or drink of any nature sold in or by restaurants, taverns or other establishments in this State or by caterers:

(1) in all instances where the sale is for consumption on the premises where sold;

(2) in those instances where the sale is for consumption off the premises and the vendor (or someone acting on behalf of the vendor) after delivery either serves or assists in serving, cooks, heats or provides services with respect to the food or drink; . . .

Section 527.10 of the Sales and Use Tax Regulations provides, in part:

Admission charge (a) Imposition. (1) A tax is imposed upon any admission charge, in excess of 10 cents, to or for the use of any place of amusement in this State.

(2) Box or seat. For any person having the permanent use or possession of a box or seat or a lease or a license, other than a season ticket, for the use of a box or seat at a place of amusement, the tax shall be upon the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by the holder, licensee or lessee, and shall be paid by the holder, licensee or lessee. This includes situations in which there is an exclusive right to use a particular box or seat for an indefinite term, or for the term of a lease or license (for every attraction and event subject to tax) presented at the place of amusement.

¹ The tax rate will revert to four percent on June 1, 2005.

(b) Definitions. (1) Admission charge.

(i) The amount paid for admissions, season ticket or subscription to any place of amusement, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor.

* * *

Example 2: An admission charge includes 75¢ per ticket for parking whether the patron does or does not avail himself of the parking privilege. This charge is shown as a separate item on every ticket. The parking charge is considered a part of the admission charge whether it is separately stated or not. Consequently, if the admission is not taxable, neither is the service charge.

* * *

(3) Place of amusement. Any place where any facilities for entertainment, amusement, or sports are provided. Such places include without limitation . . . (iii) [a] golf course . . . or other place for athletic exhibits; . . .

* * *

(c) Computation. (1) The tax imposed on admission charges shall be computed as follows:

* * *

(iii) season tickets are taxed on the total selling price thereof regardless of the price of the admission to each event.

* * *

Example 3: A season ticket holder pays \$40 for a season ticket, entitling him to attend all home games of a professional football team. The tax is computed on the \$40 admission, whether or not the holder attends the games, and regardless of the price at which the seat would have been sold for individual games.

Section 529.7(i) of the Sales and Use Tax Regulations provides, in part:

Sales by exempt organizations. (1) Except as provided in paragraphs (2) through (4) of this subdivision, sales of tangible personal property and services by exempt organizations are exempt from the sales and use tax.

(2) Retail sales of tangible personal property made by any shop or store operated by an exempt organization described in section 1116(a)(4), (5) or (6) are subject to the sales and use tax. A shop or store as used in this section includes any place or establishment where goods are sold from display with a degree of regularity, frequency and continuity as well as any place where sales are made through a temporary shop or store located on the same premises as persons required to collect tax. Vending machines alone do not constitute a shop or store. However, where vending machines are located in a defined area devoted to selling tangible personal property, then sales from such vending machines constitute sales from a shop or store.

* * *

(3) Sales of food or drink in or by a restaurant, tavern, or other establishment operated by an exempt organization are subject to the sales tax, other than the sales exempt under section 1105(d)(ii) of the Tax Law described in subdivision (h) of section 527.8 of this Title, or where the purchaser is a person or organization exempt under this Part. A restaurant, tavern, or other establishment as used in this section includes any dining room, bar and barroom, or concession stand operated with a degree of regularity, frequency and continuity as well as any place where sales are made through a temporary restaurant, tavern, or other establishment located on the same premises as persons required to collect tax. It is immaterial whether or not the restaurant, tavern, or other establishment is located on the premises of the exempt organization or whether or not the use of such facilities is restricted to the members of the organization. (See section 527.8 of this Title for the application of tax on sales of food and drink.) Vending machine sales of food or drink are considered to be in or by a restaurant, tavern or other establishment when the machines are located in a defined area devoted to this purpose and there are other furnishings or fixtures present which are commonly associated with a restaurant or similar establishment, like tables or chairs.

* * *

Example 10: An exempt organization operates a hot dog stand at a county fair. Sales made at the stand are taxable because the organization is operating on the same premises as persons required to collect tax.

Example 11: An exempt organization caters weddings and other banquets. Such catering is subject to tax.

* * *

(4) Sales of the service of providing parking, garaging or storing for motor vehicles (other than a garage which is part of the premises occupied solely as a private one or two-family dwelling) are subject to the tax when such services are provided by organizations described under section 1116(a)(4) of the Tax Law.

Section 532.1(b) of the Sales and Use Tax Regulations provides, in part:

Statement of and reference to tax. (1) Whenever the customer is given any sales slip, invoice, receipt, or other statement or memorandum of the price, amusement charge, or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him.

(2) Whenever the sales and use tax is separately stated on such document, it may be referred to as tax.

(3) The words tax included or words of similar import, on a sales slip or other document, do not constitute a separate statement of the tax, and the entire amount charged is deemed the sales price of the property sold or services rendered.

(4) No written receipt. For sales other than sales of gasoline and diesel fuel a unit price method of accounting for sales may be used where no written receipt is given to the customer. The unit price is the price, including sales tax, at which the sale is recorded. Since the customer must be made aware of the inclusion of sales tax in the total sales price, every business establishment employing the unit price method must visibly display, to all customers a placard stating that the prices of all taxable items include sales tax. If the sale is recorded on a cash register it may be rung up on a single ring, a quantity of individual items may be rung up in total, or a quantity of items can be rung up individually with a total. In addition, the vendor shall, for the benefit of his customers, distinguish between taxable and nontaxable items offered for sale. This may be done by such methods as:

(i) attaching labels to merchandise to indicate taxable or nontaxable status;

(ii) displaying taxable and nontaxable merchandise separately; or

(iii) having available detailed listings of taxable and/or nontaxable items. It is the responsibility of every vendor who sells both taxable and nontaxable items to maintain accurate records indicating such sales.

Opinion

Issue 1

Petitioner conducts a competitive golfing event, the United States Open Championship (US Open), on an annual basis. Petitioner's sales of daily and "season" spectator admissions to the US Open golf tournament, where the proceeds inure other than exclusively to the benefit of elementary or secondary schools, are subject to the sales tax imposed on admissions pursuant to sections 1105(f) and 1116(d)(2) of the Tax Law.

In addition to the individual spectator admissions to the US Open, Petitioner also sells hospitality packages affording groups admission to the US Open. The packages include the exclusive use of a hospitality table or tent, as applicable, in Petitioner's on-site tent village together with a certain number of spectator admission tickets to the US Open. Petitioner's clients are not required to purchase catering services or food and beverages in conjunction with the hospitality tent packages, but may choose to separately contract with Caterer to make such purchases. The hospitality table packages may include catering services, or alternatively, may allow clients to contract separately with Caterer for catering services or choose not to purchase any catering services. The specific details of each package, including the quantity and nature of the items included, vary according to the identity of the package purchased.

The tournament cannot be directly viewed from the tent village. All persons accessing the tent village only gain admission to the tournament grounds via their individual "daily" or "season" event admission. During the days on which the Championship tournament is conducted, the clients not only have access to the hospitality tents during the day-time hours when the tournament is being conducted but they also have after-hours access to the hospitality tents for use by the clients for their own purposes. The charges to Petitioner's clients for the use of the hospitality tents and tables (in excess of the charges applicable to daily and season spectator admission to the event) are charges for the use of space, similar in nature to charges for the rental of real property. The provision of the use of the contracted space (the hospitality tent or table within a particular tent) is the same as if Petitioner's clients had been leased the use of a room in the host course's clubhouse. Thus, to the extent Petitioner's charges for hospitality tent and hospitality table packages *do not include the provision of catering services or other sales of food or beverages*, the charges for those tents and tables in excess of the daily and season spectator admission charges, provided that such charges are separately stated on the bill, invoice or other statement of charges rendered by Petitioner to its client, are not subject to sales tax. This conclusion is consistent with *Spectacor Management Group, Adv Op Comm T & F*, February 25, 1998, TSB-A-98(7)S, which addressed the application of sales tax under section 1105(f) of the Tax Law to private suite rentals in a civic center. The portion of Petitioner's charges for the hospitality packages which relate to the daily and season spectator admissions to the event are subject to sales tax pursuant to section 1105(f) of the Tax Law. See section 527.10(b)(1)(i) of the Sales and Use Tax Regulations.

In contrast, if the hospitality package were to include food and beverages or catering services, the hospitality package charges in excess of the admission charges would be subject to sales tax pursuant to section 1105(d)(i)(2) and section 1116(b)(2) of the Tax Law. See sections 527.8(a)(2) and 529.7(i)(3) of the Sales and Use Tax Regulations. Accordingly, in such case, the entire charge for a hospitality table package would be subject to sales tax regardless of whether charges for items included in the hospitality package were separately stated on the bill, invoice or other statement of charges rendered by Petitioner to its client. See *Matter of Hunts Point Palace, Inc.*, Dec State Tax Comm, June 19, 1986, TSB-H-86(138)S.

Since Petitioner is an exempt organization pursuant to section 1116(a)(4) of the Tax Law, it could purchase any catering services it might provide as part of the hospitality packages without the payment of sales tax. In such instance, Petitioner would be required to provide the

caterer with a properly completed *Exempt Organization Exempt Purchase Certificate* (Form ST-119.1) in order to make such purchases on a tax exempt basis. However, as noted Petitioner would be required to collect sales tax on its charges for catering services, and, were Petitioner to provide such catering services as part of the hospitality packages, upon its total charge for the hospitality package.

It should be noted that the conclusions in this Advisory Opinion respecting the hospitality tent and table packages are based on the examples of these packages that are described in this Opinion. In order for these conclusions to apply to hospitality packages at future events, such hospitality packages must be substantially similar to the descriptions provided in this Advisory Opinion.

Petitioner contracts with third parties to erect temporary food service facilities throughout the Host Course. Petitioner contracts with an independent concessionaire (the Concessionaire) to operate the food concessions for the sale of refreshments to the US Open spectators. The food concession stands serve take-away prepared items such as sandwiches, snack food, and beverages. The Concessionaire is not an organization exempt from sales tax under section 1116(a) of the Tax Law. All food and beverage items, including alcoholic beverages, sold at the U S Open are presumed to be sold for on-premises consumption and are subject to the sales tax imposed by section 1105(d)(i)(1) of the Tax Law.

Petitioner contracts with an independent caterer (Caterer) to provide catering services at the US Open. Pursuant to that agreement, Caterer separately contracts with the hospitality tent package and hospitality table package clients for the provision of food and beverage services. Caterer, which is not an organization exempt from sales tax under section 1116(a) of the Tax Law, is the entity making all sales of food and beverages to the hospitality package clients. Caterer's charges to the hospitality tent and table package clients for the provision of food and beverage services are subject to sales tax pursuant to section 1105(d)(i)(2) of the Tax Law.

Issue 2

Petitioner operates temporary retail outlets for the sale of US Open clothing, programs, and souvenirs to the US Open patrons and is the legal entity making sales at the souvenir concessions. Section 1116(a) of the Tax Law provides that any sale by an organization exempt from tax under section 1116(a)(4) of the Tax Law shall be exempt from the sales and compensating use taxes, *except as otherwise provided* in section 1116. Section 1116(b) provides that, "Nothing in this section shall exempt . . . retail sales of tangible personal property by any shop or store operated by an organization described in paragraph (4) . . . of subdivision (a) of this section." Section 529.7(i)(2) of the Sales and Use Tax Regulations defines the term "shop or store" to mean, "any place where sales are made through a temporary shop or store located on the same premises as persons required to collect tax." Since Petitioner is operating its temporary retail outlets on the same premises as other persons who are required to collect sales tax, sales by Petitioner of clothing, programs, and souvenirs are subject to sales tax to the extent such items are subject to tax as provided in Articles 28 and 29 of the Tax Law. It should be noted that the state portion of the sales and use tax imposed on clothing and footwear is set to expire on

May 31, 2005. See Technical Services Bureau Memorandum entitled *Temporary Sales and Use Tax Exemption of Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing*, December 15, 2004, TSB-M-04(9)S for additional information on the sales tax as it applies to clothing and footwear.

Petitioner also makes sales of merchandise by means of catalogs. Such sales, whether they are of US Open clothing, programs, souvenirs, or other items, are not made from a shop or store or a temporary shop or store as described in section 1116(b)(1) of the Tax Law and section 529.7(i)(2) of the Sales and Use Tax Regulations. Accordingly, Petitioner's catalog sales are exempt from sales tax pursuant to section 1116(a) of the Tax Law. See *The McKenzie Institute, Inc.*, Adv Op Comm T & F, April 4, 2003, TSB-A-03(14)S. Petitioner's sales of publications made by telephone or mail order are, likewise, not subject to sales tax.

Petitioner holds three or four information sessions at the host course and Petitioner's headquarters in New Jersey at which clients are provided with a corporate gift catalog from which they may view and select souvenir US Open merchandise for their attendees. Petitioner does not solicit orders for the sale of merchandise from the corporate gift catalog at the information sessions. It is Petitioner's policy to request that merchandise orders from the corporate gift catalog be sent to Petitioner by mail or facsimile. Orders may also be placed by clients via the US Open Web site. However, as an accommodation to the clients, Petitioner's representatives may accept orders from the clients for merchandise, which are forwarded to Petitioner's administrative offices for processing.

Sales made in this manner, regardless of whether Petitioner takes the orders inside of New York State, do not constitute sales from a shop or store as contemplated in section 1116(b)(1) of the Tax Law. See section 529.7(i)(2) of the Sales and Use Tax Regulations. Accordingly, Petitioner's sales of souvenir merchandise made in this manner are not subject to the sales or use tax. This is so regardless of whether delivery of the ordered merchandise occurs in New York State.

Petitioner also sells US Open uniforms to volunteers engaged to assist in the conduct of the US Open. The uniform sales are processed by Petitioner's staff and drop-shipped directly from the manufacturer to the volunteer. These sales do not constitute sales from a shop or store as contemplated in section 1116(b)(1) of the Tax Law and are not subject to the sales or use tax regardless of whether delivery of the uniforms occurs in New York State.

Issue 3

Petitioner seeks to streamline the handling of cash receipts from souvenir and food concession sales at the US Open by selling all items for whole dollar (and, to a lesser extent, one-quarter dollar) amounts in order to avoid making change and handling coinage. To accomplish this, Petitioner proposes to price taxable items at amounts such that when the appropriate sales and use tax is added to the purchase price, the sum of the purchase price plus the applicable sales tax results in a whole dollar amount to be collected from the customer. Under this pricing strategy, the price tag on each item of the merchandise sold at the US Opens held in New York

would state the selling price of the merchandise plus applicable sales tax as a single amount and bear the legend "Includes All Applicable Taxes." Pricing for the Concessionaire sales of food and beverages will bear the legend "Price Includes All Applicable Sales Tax" on prominently displayed signs, rather than price tags.

Petitioner inquires as to whether this strategy satisfies the requirements set forth under section 1132(a) of the Tax Law for the separate statement of tax and whether it is permissible under the circumstances to apply the tax to the actual selling price of each item rather than on the aggregate price of several items purchased by the same customer.

Where Petitioner does not provide a written receipt, the use of the "unit price method" described in section 532.1(b) of the Sales and Use Tax Regulations is permissible, provided that Petitioner visibly displays to all customers a sign or placard stating that the prices of all taxable items include sales tax. However, where, under these circumstances, the customer is provided with any sales slip, invoice, receipt, or other statement or memorandum of the price paid, the tax must be stated, charged and shown separately on the first of such documents given to him. Accordingly, Petitioner's proposal to indicate a "price includes sales tax" notation on the price tag for an item and break out the sales tax on the cash register receipt, will comply with the requirements of Article 28 of the Tax Law. Section 532.1(b)(4) of the Sales and Use Tax Regulations further provides that, "If the sale is recorded on a cash register it may be rung up on a single ring, a quantity of individual items may be rung up in total, or a quantity of items can be rung up individually with a total." Therefore, provided that Petitioner remits the tax with its sales and use tax return according to the provisions of section 1137 of the Tax Law, it is permissible to charge the customer for each item with sales tax individually noted for each item with a total.

DATED: February 3, 2005

/s/
Jonathan Pessen
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Technical Services Division

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