

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-17(5)S
Sales Tax
March 3, 2017

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140512B

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (Petitioner), [REDACTED]. Petitioner requests guidance on whether receipts from certain fees paid by non-members would be subject to New York State and local sales tax. Specifically, Petitioner seeks an opinion in regard to (1) tennis lessons, (2) mini-camps for children, (3) children's sing-along programs, and (4) rentals of its facilities.

We conclude that receipts from (1) tennis lessons, (2) mini-camps for children, and (3) children's sing-along programs are not subject to New York State sales tax. However, (4) rental of its facilities is subject to sales tax if the rental is in conjunction with any catering services performed by Petitioner.

Facts

Petitioner is a club of approximately 220 members, each member being considered an owner of the club and its property. Membership is restricted to property owners within a certain legally recognized residential district in the county in which the club is located. Petitioner's members annually elect board members and have the power to amend its by-laws.

Petitioner operates from Memorial Day to Labor Day. Petitioner offers social events, the use of a lake, and sporting facilities such as tennis, volleyball, and softball. Petitioner offers activities for young children, such as sing-alongs and crafts. Additional activities are offered for older children, including the above sporting activities. Petitioner also offers a snack bar. Otherwise, occasional dinner parties are hosted on club premises, which are catered by outside caterers.

As a social club, Petitioner collects New York State and local sales tax on all receipts from member activity fees. Petitioner seeks guidance on the taxability of its activity fees charged to non-members. The non-members possess no rights whatsoever in relation to the club, except the ability to participate in the activity for which payment is made. Specifically, the club-sponsored activities for non-members are (1) tennis lessons,

(2) mini-camps for children, (3) children's sing-along programs, and (4) rentals of its facilities.

The mini-camps for children are half-day programs for children of kindergarten age or younger. The activities include instructional swimming, tennis, sports, games, crafts, and other outdoor play. Lunch is provided by the snack bar, which is included in the cost of the program and not billed separately.

The sing-along program consists of scheduled times when a professional musician is hired by the club to sing popular children's songs to the participants. The participating children are invited to sing along with the musician. The musician is given no equipment and performs seated on a deck surrounded by the children. The club does not have any performance venue such as an auditorium or theatre.

The facility rentals consist of several options. First, the outdoor facilities can be rented, e.g., the beach front, lake, or basketball court. In conjunction with such rental, any catering services by Petitioner's snack bar are charged separately and additionally. Second, the dining areas may be rented for an occasion such as a wedding. These events are catered by a separate, outside catering service. However, the club requires that it cater all alcoholic beverages in conjunction with any catering performed by an outside food caterer. Outside caterers cannot provide alcoholic beverages on club premises.

Analysis

Petitioner is operating a social club as defined by Sales and Use Tax Regulation 20 NYCRR 527.11(b) and its receipts from dues paid are taxable under Tax Law § 1105(f). However, the fees charged to non-members for activities would not be subject to tax merely as a result of the club's relationship to its members. *See* TSB-A-02(8)S. Accordingly, the nature of each activity must be reviewed to determine its taxability.

Tennis Lessons -- The receipts from tennis lessons are not taxable. Providing a tennis lesson is in the nature of an instructional activity that is not a service subject to sales tax.

Mini-Camps for Children -- The nature of the purchase here is a mini-camp and its activities for small children. The activities of the camp by themselves are not subject to sales tax, because the activities are instructional in nature or otherwise involve supervised play and crafts. However, the mini-camps include lunch; that fact requires additional consideration.

Sales tax is generally imposed on the entirety of a receipt where the receipt includes a sale of prepared food. Specifically, Tax Law § 1105(d) imposes sales tax on receipts from

every sale of any 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.

Notwithstanding Tax Law § 1105(d), a receipt is not subject to tax where the inclusion of food is incidental to the actual purchase. Merely incidental inclusion of food and drink is considered ancillary to the purchase itself, such as the inclusion of a simple box lunch or beverage on a charter sailing excursion. *See* TSB-A-97(52)S (determining that boxed lunches consisting of sandwiches, soda and chips provided in conjunction with a charter sailing excursion were not subject to sales tax where the charge for the 6-hour excursion for three people, including the boxed lunch, was \$150.00).

The cost of the mini-camp here ranges from \$385.00 to \$400.00, depending on the date of registration. Each mini-camp runs daily, 9 a.m. to 1 p.m., for a period of one week. All of the children are kindergarten age or younger. Lunch provided by a snack bar in such circumstances would appear to be incidental. Therefore, as long as the value of the food provided is incidental to the overall charge for the camp, the receipts for the mini-camp would not be taxable.

Sing-Along Programs -- Tax Law § 1105(f) imposes sales tax on receipts from any admission charge to a place of amusement. A place of amusement includes, without limitation, “a theatre of any kind, concert hall, opera house, or other place where a performance is given.” *See* 20 NYCRR 527.10. However, Tax Law § 1105(f) excludes receipts for admission to dramatic or musical arts performances from sales tax.

Here, the club hires a professional singer to perform children’s songs on its covered deck. This constitutes a musical arts performance for the children and, therefore, is within the exclusion in Tax Law § 1105(f). Accordingly, the receipts from the sing-along program are not subject to sales tax.

Facility Rental -- By itself, a receipt for the rental of a room or another of the club’s facilities would not be subject to sales tax. However, as outlined by the petitioner, such rental is often made in conjunction with the petitioner’s sale of its catering services. As cited previously, Tax Law § 1105(d) imposes tax on the receipts from every sale by caterers, including in the amount of such receipts any “other charge” made to its customers. Accordingly, the imposition of sales tax on the receipts from its facility rentals depends on whether the petitioner is also providing catering services.

On the occasions when the Petitioner rents its facilities without providing any catering services whatsoever, the rental fee would not be subject to sales tax. When the petitioner rents a

facility in conjunction with a catering service, whether for food or for alcoholic beverages, the rental charge for the facility constitutes an “other charge” made to the customer. Thus, if catering services are sold in conjunction with a facility rental, then the entire receipt, including the rental fee, is subject to sales tax. *See* 20 NYCRR 527.8(f); TB-ST-110.

DATED: March 3, 2017

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.