

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

TSB-A-17(8)S
Sales Tax
June 21, 2017

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S150921A

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether ticket sales for a charity softball game are subject to sales tax.

We conclude that the admissions charges to the charity softball game are subject to sales tax.

Facts

Petitioner is a minor league baseball team that owns a stadium. In its stadium, Petitioner holds baseball games, as well as other outside events. Petitioner rented its facilities to a non-profit organization to hold a charity softball game. The non-profit organization is registered with the Department as an exempt organization for sales tax purposes. Petitioner states that the softball game was held for the purpose of raising money for the non-profit's foundation fund, and not for the benefit of an elementary or secondary school. Petitioner promoted and sold tickets on behalf of the organization through its in-house ticketing system. The ticket prices ranged from \$11.00 to \$20.00 per ticket and Petitioner collected the selling price, including sales tax on the sales of the tickets. The proceeds from the ticket sales after rent, other out-of-pocket expenses of Petitioner and sales tax were paid to the non-profit organization.

Analysis

Tax Law § 1105 imposes New York State and local sales tax on receipts from tangible personal property, enumerated services, and other items. Specifically, Tax Law § 1105 (f)(1) imposes a tax on the receipts from admission charges to or for the use of, places of amusement and entertainment that are in excess of ten cents. *See* 20 NYCRR 527.10 (a). Tax Law § 1101(d)(2) defines "admission charge" as the amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of the facilities therefore. Charges for admission to sporting events and exhibitions are within the scope of amusement charges subject to sales tax. *See* 20 NYCRR 527.10 (b)(1)(ii). Although exempt organizations generally are not required to collect sales tax on admission charges to places of

amusement and entertainment, the exemption for admissions charges by an exempt organization does not include admissions to athletic games or exhibitions, unless all the proceeds inure exclusively to the benefit of an elementary or secondary school. *See* Tax Law § 1116 (d)(2)(A) and 20 NYCRR 527.10 (e)(2)(ii)(a).

The Sales and Use Tax Regulations provide several examples that illustrate when admission charges to athletic games and exhibitions are subject to sales tax. The regulation provides:

Example 5: The employees of radio station R challenge the employees of television station T to a softball game. Spectators are charged \$1.50 admission. All proceeds from the game are to be given to a local high school for its benefit. The \$1.50 admission charge is exempt.

Example 6: All the facts are the same as in example 5, except that the proceeds of the game will be given to the United Fund. The \$1.50 admission charge is taxable.

Example 7: Admission charges to a basketball game between two high schools inure exclusively to the benefit of the school. Such admission charges are exempt.

20 NYCRR 527.10 (e)(2)(ii)(a)

While the non-profit organization that rented the Petitioner's facilities is registered as an exempt organization for sales tax purposes, and generally would not be required to collect sales tax on admission charges, the admissions charges to the non-profit's charity softball game are subject to sales tax because the game was played to benefit the non-profit organization and to further its goals, and the proceeds were not for the benefit of an elementary or secondary school.

Under these facts, even though Petitioner was not the organizer of the charity softball game, Petitioner sold the tickets and collected the admission charges for that game. Accordingly, Petitioner is the recipient of an amusement charge that is subject to sales tax. *See* Tax Law § 1101(d)(11). Thus, Petitioner is a "person required to collect sales tax," and was required to collect tax on the tickets sold for the charity game and remit the tax to the Department. *See* Tax Law § 1131 (1). In addition, even if the admissions to the charity event had been determined to be exempt, because Petitioner collected sales tax on the admission

charges, it was required to remit the tax collected to the Department. *See* Tax Law § 1137(a)(iii).

DATED: June 21, 2017

_____/S/_____
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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.