

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-81(13)S
Sales Tax
August 24, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810309B

On March 9, 1981 a Petition for Advisory Opinion was received from Miller, Addison, Steele, Inc., 5 East 57th St., New York, New York 10022.

The issue raised is whether sales made within New York State of in-state or out-of-state time-sharing interests in real property are subject to the New York State sales tax.

Petitioner defines the term "time-share estate" by reference to Section 718.103(19) of Florida's Condominium Act, as "any interest in a condominium unit under which the exclusive right of use, possession or occupancy of the unit circulates among the various owners of time-share estates in such unit in accordance with a fixed time schedule on a periodically recurring basis for a period of time established by such schedule."

Petitioner describes four types of time-share estates. "Interval ownership" is described as a fee-simple form of time sharing "based upon a revolving set of tenancies for years (broken down into weekly or longer periods), coupled with a remainder over to all of the time-shared owners at the expiration of the useful life of the building, in tenancy in common." "Tenancy in common time-sharing" involves a tenancy in common on the part of a number of owners "accompanied by a side agreement among such owners to use the units for particular periods of time each year." The third type of time-sharing interest described by Petitioner is the "vacation lease," which is a "lease for the same recurring period of time each year in a time-shared unit." Finally, a "vacation license" is described as "a right to use a particular unit in a development for given time periods each year over a number of years."

The units at issue include fully equipped efficiencies, one and two bedroom apartments, and hotel rooms. Vacation licenses are stated by Petitioner to be most commonly used in connection with the time-sharing of hotel facilities.

Article 28 of the Tax Law imposes a sales tax applicable to (1) sales of tangible personal property, (2) sales of enumerated services, (3) the use of tangible personal property and services, (4) sales of gas, electricity, refrigeration and steam, and telephone and telegraph services, (5) occupancies of hotel and motel rooms, (6) food and beverages sold by restaurants and caterers, (7) admission charges to certain place of amusement and to cabarets and similar places, and (8) club dues.

Receipts from the sale of real property, whether conveyed in fee-simple or tenancy in common, are not included within the ambit of Article 28. Receipts from the leasing of, or the licensing to use, real property, are also generally not subject to tax under Article 28 of the Tax Law. Tax is imposed, however, in the instance where such leasing or licensing constitutes the rental of a

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hotel room located in New York. With respect to this, Section 1105(e) of the Tax Law, contained in Article 28, imposes a tax on "The rent for every occupancy of a room TSB-A-81 (13)S Sales Tax August,24, 1981 or rooms in a hotel in this state, except that the tax shall not be imposed upon (1) a permanent resident, or (2) where the rent is not more than at the rate of two dollars per day." The term "hotel" is defined, in Section 1101(c)(1) of the Tax Law, as "A building or portion of it which is regularly used and kept open as such for the lodging of guests. The term 'hotel' includes an apartment hotel, a motel, boarding house or club, whether or not meals are served." The application of these statutory provisions is described in detail in Section 527.9 of the Sales & Use Tax Regulations. 20 NYCRR 527.9.

DATED: August 6, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau