

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

TSB-A-81(8)S  
Sales Tax  
August 13, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810406A

On April 6, 1981 a Petition for Advisory Opinion was received from Tee Bar Corporation, Rte. 44-55, Highland, N.Y. 12528.

The issue raised is whether Petitioner (a vendor) is relieved of its obligation to collect sales tax from organizations which present evidences of exemption from New York State and local sales taxes other than a properly completed Form ST-119.1, Exempt Organization Certification.

Petitioner operates a resort hotel which provides its facilities to the public and regularly collects sales tax on its charges. Various organizations which send groups to Petitioner's resort for the use of its facilities advise Petitioner that they qualify for exempt organization status with respect to New York State and local sales taxes. Petitioner's policy has been to accept an exemption certificate issued by New York, New Jersey, or Connecticut, as a basis for refraining from the collection of tax.

Section 1132(c) of the Tax Law provides, in relevant part, as follows: ". . . it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five, all rents for occupancy of the type mentioned in subdivision (e) of said section . . . are subject to tax until the contrary is established, and the burden of proving that any receipt, amusement charge or rent is not taxable hereunder shall be upon the person required to collect tax or the customer. Unless . . . (2) the purchaser prior to taking delivery, furnishes to the vendor: any affidavit, statement or additional evidence, documentary or otherwise, which the tax commission may require demonstrating that the purchaser is an exempt organization described in section eleven hundred sixteen, the sale shall be deemed a taxable sale at retail . . . The vendor shall not be required to collect tax from purchasers who furnish . . . an exempt organization statement in proper form . . . ." (Emphasis added).

The Tax Commission has provided, in its Sales and Use Tax Regulations, for the type of documentation required of organizations asserting exemptions with respect to the tax imposed, by Section 1105(e) of the Tax Law, on rents for hotel occupancy, as follows:

"(d) Exemptions from tax on occupancy. The following are exempt from the State and local sales tax imposed on hotel occupancy: (1) New York State and its agencies and instrumentalities.

(i) Where payment is made by a representative or employee of the State or its political subdivisions while on official business, the exemption is established by furnishing the operator with a properly completed Tax Exemption Certificate (Form AC-946).

(ii) Where direct payment is made by the State for occupancy by a representative or employee of the State or its political subdivisions while on official business no certificate is required to establish the exemption.

(2) The United States of America and its agencies and instrumentalities.

(i) Where payment is made by a Federal employee while on official business the exemption is established by furnishing the operator with a properly completed Exemption Certificate, Tax on Occupancy of Hotel Rooms (Form ST-129).

(ii) Where direct payment is made by the United States for occupancy by an employee of the Federal Government while on official business no certificate is required to establish the exemption.

(3) The United Nations, any international organization [of] which the United States is a member, and ambassadors, ministers or other diplomatic representatives of foreign governments.

(i) Where payment is made by United Nations employees or employees of any international organization of which the United States is a member while on official business, the exemption is established by furnishing the operator with a properly completed Exempt Organization Certification (Form ST-119.1).

(ii) Where payment is made by diplomatic or consular representatives and members of their families the exemption is established by furnishing the operator with a properly completed Certificate of Diplomatic and Consular Exemption (Form ST-126).

(4) Organizations determined to be exempt under Section 1116(a)(4) and Section 1116(a)(5) of the Tax Law.

(i) Where payment is made by an exempt organization for occupancy of rooms for its own use or for use by its officers and employees in the conduct of the organization's activities the exemption is established by furnishing the operator with a properly completed Exempt Organization Certificate (Form ST-119.1).

(ii) Where the exempt organization purchases rooms for resale to its members it is not liable for tax if a properly completed Exempt Organization Certificate (Form ST-119.1) is submitted to the operator, and the exempt organization is not required to collect tax on the charge for occupancy to its members because it is not the operator of a hotel.

(iii) Where payment is made by members of an exempt organization directly to the operator, there is no exemption from the tax on occupancy." 20 NYCRR 527.9(d).

Similar requirements apply with respect to sales of tangible personal property or taxable services by Petitioner to its customers.

Accordingly, Petitioner is required by the Tax Law to collect sales tax on taxable transactions unless its customer furnishes it with the appropriate document described in the provision of the Sales and Use Tax Regulations set forth above.

DATED: July 29, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau