

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

TSB-A-85(54)S
Sales Tax
November 8, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850617A

On June 17, 1985 a Petition for Advisory Opinion was received from Bichor Cholim of Williamsburgh, Inc., 4305 Seagate Avenue, Brooklyn, New York 11224.

The issue raised is whether the charge for occupancy in a convalescent home as well as separately billed charges for telephone and air conditioning service are subject to sales tax.

Petitioner operates a convalescent home for persons recovering from major surgery and child birth. A charge is made for each night of occupancy and additional charges are made for the use of telephone and air conditioning service. Occupancies are generally for periods of two weeks or less.

The Tax Law imposes a sales tax on the charge for hotel occupancies which are for terms of less than ninety days where such charge is more than two dollars per day. Tax Law 1105(e), 1101(c)(5). The Sales and Use Tax Regulations provide that when convalescent homes ". . . registered with the New York State Department of Social Services or Department of Mental Hygiene, whether publicly or privately owned and operated, accept as patients persons who require special care on account of age, illness, mental or physical condition or the like, and provide this special care either by nurses, orderlies or aides, they are deemed not to be hotels with respect to such patients." (20 NYCRR 527.9(e)(2)). Accordingly, occupancies of this nature in convalescent homes are not subject to the tax imposed by section 1105(e) of the Tax Law. Inasmuch as the telephone and air conditioning service is incidental to the convalescent home occupancy, such charges are exempt from tax as part of such occupancy. (Cf. 20 NYCRR 527.9(i)(1)(i)).

DATED: September 10, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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