

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

TSB-A-92 (21) S
Sales Tax
March 11, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910904A

On September 4, 1991 a Petition for Advisory Opinion was received from Mark R. Posner CPA, 2545 Hempstead Turnpike, East Meadow, New York 11554.

The issue raised by Petitioner, Mark R. Posner CPA, is whether Petitioner's client, a co-operative housing corporation, should collect sales tax on rental fees charged by it on shares allocated to garage spaces/parking spaces.

Petitioner's client is a co-operative housing corporation. Located on the premises are garage spaces and parking spaces. As set forth in prospectus of the co-operative housing corporation, these spaces have shares of the corporation assigned to them just like apartments shares. The garage spaces and parking spaces must be purchased by the tenant shareholders in order to use them. The rental fee is charged by the corporation at the same rate per share for apartments. garage spaces and parking spaces. It is used to pay all expenses of the building (i.e. real estate taxes, repairs, payroll, general maintenance, etc.).

Section 1105(c)(6) of the Tax Law effective June 1, 1990 imposes sales tax upon the service of:

Providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles.

In the instant case the tenant-shareholder is the owner of the parking space represented by the shares of stock of the co-operative corporation owned by him and allocated to his parking space just as he is the owner of the apartment represented by the shares of stock of the corporation owned by him and allocated to his apartment. Since the receipt of the rental fees set forth above from the tenant shareholders do not constitute receipts from the operation of a garage, parking lot or other place of business providing parking, garaging or storage of motor vehicles, such receipts are not subject to the tax imposed by Section 1105(c)(6) of the Tax Law.

DATED: March 11, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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