

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-12(28)S
Sales Tax
October 24, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120409B

On April 9, 2012, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] concerning several fact patterns related to state and city sales taxes on parking receipts from shareholders (“members”) and non-shareholder (“non-member”) residents of its cooperative housing development in Manhattan.

We conclude that members and non-member residents of the cooperative housing development whose parking charges are paid for by a member are eligible for the homeowner’s association exclusion from payment of New York State and New York City motor vehicle parking, garaging or storing sales taxes imposed pursuant to Tax Law Sections 1105, 1109, 1210(a)(4)(ii) and 1212-A(a)(1) and Sections 11-2001(a) and 11-2049 of the New York City Administrative Code. A non-member resident whose parking charges are not paid for by a member, if qualified as a Manhattan resident, may be eligible for exemption from the local sales tax authorized by Tax Law §1212 and imposed by §11-2049 of the New York City Administrative Code.

Facts

Petitioner (the “Association”) asserts that it is a cooperative housing development located in Manhattan, which contains residential apartments in multiple buildings within a defined geographical area bounded by City streets, and a parking facility located within the development (the “Parking Facility”) that is leased by the Petitioner to a parking facility operator (the “Parking Facility Operator”). The Association’s membership is comprised exclusively of members who own the shares of the Association allocated to their apartments, and who are parties to leases/occupancy agreements with the Association for those apartments pursuant to which they pay monthly maintenance charges to the Association.

The Parking Facility is used by the members, by non-member residents who reside in members’ apartments as part of their household, and by the general public. A specific number of spaces in the Parking Facility are designated, at a reduced parking rate, for the exclusive use of the members and non-member residents. Parking charges are billed by the Association to the members’ monthly maintenance bills.

Petitioner requests advice concerning the appropriate state and city sales taxes to be collected on parking receipts in the following scenarios:

Question 1

“A’s” primary residence is in one of the Association’s Manhattan apartments and he parks in the Association’s Parking Facility, but he is not a member of the Association. The parking charges are billed to the member with whom “A” resides. “A” owns the vehicle that is parked in the Association’s

Parking Facility; the vehicle is registered with the New York State Department of Motor Vehicles in accordance with the provisions of the Vehicle and Traffic Law; the registration is to his primary Manhattan address; and the vehicle is not used in carrying on a trade, business or other commercial activity.

- (a) What parking taxes are payable on the parking charges paid to the Association?
- (b) Would the answer be different if the parking charges were paid to the Parking Facility Operator?

Question 2

“B” is a resident member of the Association and parks in the Parking Facility, but does not qualify as a Manhattan resident. The vehicle parked by “B” in the Parking Facility is registered in the name of and owned by “B”.

- (a) What parking taxes are payable by “B” on the parking charges paid by “B” to the Association?
- (b) Would the answer be different if “B” paid the parking charges to the Parking Facility Operator and, if so, what parking taxes would then be payable by “B”?

Question 3

“B” is a resident member of the Association, but does not qualify as a Manhattan resident. “B’s” spouse, who resides with “B” in “B’s” apartment but is not a member of the Association nor a Manhattan resident, is the registered owner of a vehicle that “B” parks in the Parking Facility and for which “B” pays the parking charges.

- (a) What parking taxes are payable by “B” on the parking charges paid by “B” to the Association?
- (b) Would the answer be different if “B” paid the parking charges to the Parking Facility Operator?
- (c) Would the answer be different if “B’s” spouse, the registered owner of the vehicle, qualified as a Manhattan resident and, if so, what parking taxes would then be payable by “B”?

Question 4

“C” is a resident of the Association and parks in the Parking Facility. “C” is not a member of the Association and does not qualify as a Manhattan resident.

- (a) What parking taxes are payable by “C” on the parking charges paid by “C” to the Association?
- (b) Would the answer be different if “C” paid the parking charges to the Parking Facility Operator?

Question 5

“D,” is a resident member of the Association, qualifies as a Manhattan resident and parks in the Parking Facility.

- (a) What parking taxes are payable by “D” on the parking charges paid by “D” to the Association?
- (b) Would the answer be different if “D” paid the parking charges to the Parking Facility Operator?

Analysis

Prior to the application of any exclusions from tax permitted by law, the combined rate of state and city sales taxes on receipts from parking in Manhattan is 18 ³/₈%, computed as follows:

Section 1105(c)(6) of the Tax Law imposes a four percent (4%) state sales tax upon receipts from “(p)roviding 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. . . .” Section 1210(d)(4) of the Tax Law authorizes and Section 11-2001(b)(1)(ii) of the New York City Administrative Code imposes six percent (6%) New York City local sales tax on such receipts within the city limits. Section 1109(a) of the Tax Law imposes an additional three-eighths of one percent (3/8%) tax on such receipts within the metropolitan commuter transportation district. Section 1212-A(a) of the Tax Law authorizes New York City to adopt an additional parking tax for New York County (Manhattan) of eight percent (8%) and Section 11-2049 of the New York City Administrative Code imposes the same.

However, each of the aforementioned Tax Law sections by direct language or incorporation by reference provides that “receipts for such services paid to a homeowner’s association by its members or receipts paid by members of a homeowner’s association to a person leasing the parking facility from the homeowner’s association shall not be subject to the tax imposed by this paragraph. For purposes of this paragraph, a homeowner’s association is an association (including a cooperative housing or apartment corporation) (i) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision and (ii) which owns or operates a garage, parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles located in such area for use (whether or not exclusive) by such owners or residents.”

To qualify for the exclusion from State and New York City parking taxes, a homeowner’s association member must make payment to a properly constituted homeowner’s association or its parking vendor for the privilege of parking in the association’s colocated parking facility. (See TSB-A-01(9)S; TSB-M-01(3)S; TSB-A-00(40)S). Notably, there is no vehicle ownership limitation on eligibility for the exclusion. The purpose of the exclusion was to address the inequity that existed prior to its passage in that homeowners were exempt from paying parking taxes when parking in their own garages, “whereas, residents of co-ops were required to pay tax for parking their own vehicles in their own buildings.” TSB-A-00(40)S, *supra*; 1998 McKinney’s Session Laws of New York, 1772,1773. The New York State Assembly Legislative Memorandum in support of the legislation that extended the previously enacted homeowner’s association exclusion to New York City parking taxes, explains that the exclusion “appropriately recognizes that a homeowner should not be required to pay sales tax for parking a car in a garage which is part of his or her home...the sales tax would apply only to individuals who are parking temporarily in a parking garage, and not on individuals who are parking their cars at home.” *Memorandum of Assm. Ivan Lafayette, Governor’s Bill Jacket, L. 1998, c.344*. On the facts as presented by the Petitioner and consistent with the principle that co-op owners are to be treated as homeowners, the Association’s members are not subject to any of the State and City parking taxes on parking charges that they pay to the Association or the Parking Facility Operator, regardless

of whether they are paying to park their own vehicle or that of a household member. If the parking charges are paid for by a non-member resident of the cooperative, the resident would not be eligible for the full exclusion, but, if qualified, may be eligible for exemption from the special additional parking tax imposed in Manhattan.

Tax Law Section 1212-A(a)(1) provides:

[E]xcept receipts from the sale of such services to an individual resident of such county [New York County] when such services are rendered on a monthly or longer-term basis at the principal location for the parking, garaging or storing of a motor vehicle owned or leased (but only in the case of a lease for a term of one year or more) by such individual resident. . . .

(i) For purposes of the tax authorized by paragraph one of this subdivision, the following terms shall mean:

(A) 'Individual resident.' A natural person who maintains in the county in which such tax is authorized to be imposed a permanent place of abode which is such person's primary residence.

(B) 'Motor vehicle.' A motor vehicle which is registered pursuant to the vehicle and traffic law at the address of the primary residence referred to in clause (A) of this subparagraph, or which is registered pursuant to the vehicle and traffic law and leased to an individual resident at the address of the primary residence referred to in clause (A) of this subparagraph, and which is not used in carrying on any trade, business or commercial activity.

If a resident meets the vehicle registration, ownership and residency requirements established by Section 1212-A(a)(1), and the parking services are rendered on a monthly or longer-term basis, and the resident applies for and obtains an exemption certificate from the City of New York, the resident would be exempt from the 8% additional parking tax for New York County (Manhattan), but would still be subject to the remaining 10³/₈% State and City sales taxes on receipts from parking services. (*See* TSB-M-96(13)S; TSB-A-01(9)S, *supra*; TSB-M-01(3)S, *supra*; TSB-A-00(40)S, *supra*).

With respect to the parking scenarios queried by the Petitioner, the member described in questions 2, 3 and 5 would owe no state or city sales taxes upon payment of parking charges to the Association or the Parking Facility Operator, because in each of those fact patterns, parking charges are being paid by the member for parking his or her own vehicle or that of a household member. The non-member resident described in question 4 would owe the full 18³/₈% State and City sales taxes upon payment of parking charges to either the Association or the Parking Facility Operator, because neither the homeowner's association exclusion, nor the qualified Manhattan resident exemption applies to that resident.

The outcome of question 1 varies depending upon who pays for the parking charges. If the charges are paid for by the member to whom they are billed, no State or City sales taxes would be owed to either the Association or the Parking Facility Operator. Effectively, this is the same question as question 3(c) and, as in that question; the salient fact is that the parking charges are being paid for

by a member, so a full exclusion from taxes is triggered. However, if the parking charges, though billed to the member, are paid for by the non-member resident, parking sales taxes of 10³/₈% would be payable to the Association or Parking Facility Operator, assuming, as described, that the resident is qualified for the Manhattan resident exclusion and applies for and obtains an exemption certificate from the City of New York.

DATED: October 24, 2012

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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.