

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-02(21)S
Sales Tax
July 2, 2002

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S010124A

On January 24, 2001, the Department of Taxation and Finance received a Petition for Advisory Opinion from The Statue of Liberty-Ellis Island Foundation, 52 Vanderbilt Avenue, New York, NY 10017-3898. Petitioner submitted additional information with respect to the Petition on September 25, 2001.

The issues raised by Petitioner, The Statue of Liberty-Ellis Island Foundation, are:

1. Whether fees paid by visitors to the American Family Immigration History Center (the "Center") operated by Petitioner for admission to and use of the facilities of the Center to conduct research on immigration and genealogy are subject to sales tax.
2. Whether fees paid for reproductions of manifests and other items located by visitors in connection with their research at the Center are subject to sales tax.
3. Whether fees donated by individuals to become "Charter Founders" or "Sustaining Members" of Petitioner are subject to sales tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a non-profit corporation that was founded in 1981 to serve as the primary fundraiser for the restoration of the Statue of Liberty and Ellis Island. Petitioner is exempt from federal corporate franchise tax pursuant to section 501(c)(3) of the Internal Revenue Code and from New York State sales tax on its purchases pursuant to Section 1116(a)(4) of the Tax Law. In addition to its fund-raising responsibilities, Petitioner is obligated to: (i) ensure the permanence of the Statue of Liberty; (ii) restore, preserve and protect the Statue of Liberty National Museum; (iii) acquire records, relics and other items of historic interest related to the Statue of Liberty and Ellis Island; and (iv) foster, promote and stimulate public knowledge of and interest in the history of the Statue of Liberty and Ellis Island. In furtherance of these duties, Petitioner restored the Statue of Liberty, funded and produced Liberty Weekend in 1986 as a celebration of the Statue's 100th anniversary, and restored the main building at Ellis Island to house the newly created Ellis Island Immigration Museum.

Currently, Petitioner has undertaken the task of creating an educational venue where members of the public are encouraged to research their families' connection to Ellis Island. To accomplish this task, Petitioner is working in conjunction with the National Park Service ("NPS"), the operator of the Statue of Liberty National Monument, to establish the Center to serve as a source of immigration and genealogy information. The Center, which is located in the main building at the

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Ellis Island Immigration Museum, will use computer technology to provide access to various electronic materials that have been produced and collected by Petitioner relating to immigration and genealogy, including Ellis Island and other immigration records, as well as other family history resources. This technology will permit visitors to trace their family roots, learning not only the identity of their ancestors, but also the ships they arrived on, ports of origin, dates of departure and arrival, and marital status. In the future, Petitioner expects to rehabilitate the Baggage and Dormitory Building on Ellis Island to allow for an expanded Center.

This project is to be paid for in its entirety by private donations. In order to raise the necessary funds, Petitioner has asked members of the public to contribute to the launch of the Center by becoming "Charter Founders." Previously, one could become a Charter Founder by contributing any amount to Petitioner. However, Petitioner now requires contributions of \$45 or more to become a Charter Founder. Charter Founders' names will be placed in the Register of Charter Founders which will be kept on permanent display once the Center is officially dedicated. After the Center opens, Petitioner will ask members of the public to contribute to the Center by becoming "Sustaining Members." To become a Sustaining Member, Petitioner will require a minimum gift of \$45. Both the Sustaining Members and the Charter Founders will be entitled to use Petitioner's documenting stations described below. Petitioner will treat such gifts as charitable contributions under Section 170 of the Internal Revenue Code.

Initially the Center will contain approximately 40 computer workstations for use by visitors. These workstations will give visitors the ability to: (1) search records of family members and others who came to Ellis Island between 1892 and 1924; (2) view images of the ships that brought people to Ellis Island during those times; (3) explore multimedia presentations about United States immigration groups, patterns of immigrant origin, and immigration history in general; (4) review information about resources available to gather additional information about their family history; and (5) create and maintain digitized family scrapbooks containing documents such as family trees, family photos, and birth certificates. Printed copies of the actual ship manifests documenting immigrants' travel to the United States will be made available for a fee. The Center also plans to make these various activities available to the public over the Internet. Petitioner will charge an admission fee (currently set at \$5) for access to the Center, which will entitle visitors to use a computer workstation for a thirty-minute session. All of the proceeds collected by the Center will be used exclusively for the benefit of Petitioner. Petitioner has contracted with NPS to be the sole operator of the Center.

In addition to the computer workstations, "documenting" stations will be set up at the Center. Charter Founders and Sustaining Members can use the documenting stations' equipment to create archival records of their family's history. The Charter Founders and Sustaining Members will be permitted to use the computers, scanners and recording equipment at these stations to create digital records of photographs, personal documents, pages of written text, and short audio recordings to either contribute to the digital archive or to keep private to the Charter Founder or Sustaining

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Member and their ten designated "Guests." These additional digital records will augment Petitioner's database and add a new dimension to its records.

Charter Founders and Sustaining Members will be entitled to print-out copies of their digital records in the form of a scrapbook at an additional charge. Charter Founders and Sustaining Members will also be able to purchase additional paper copies and CD-ROM versions of such records.

The Center will contain an interpretive shop where visitors will be allowed to purchase other items relating to immigration and genealogical studies. However, the types of items that can be sold in this shop are limited by Petitioner's contract with NPS and by the NPS contract with the operator of the souvenir shop at Ellis Island. Consequently, the Center expects that only products that are "necessary and appropriate" to the immigration and genealogy functions of the Center and that have been approved by NPS will be made available. For example, the contract specifically prohibits the sale of "general merchandise, t-shirts, or other gift shop-type items." Pending approval by NPS, the Center currently plans to sell the following items in the interpretive shop: binders for family scrapbooks; journals for genealogical research; and historical maps. Petitioner anticipates that some visitors may wish to frame copies of the ship manifests and ship images that they have discovered during their research, and so appropriately sized framing material may also be available at the shop.

Visitors who, during their research at the Center, have identified items of which they would like copies, including copies of manifests and images of ships on which family members may have arrived, will be able to obtain copies of these items at the interpretative shop upon payment of the charge for the reproduction.

Applicable Laws and Regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property

Section 1105(a) of the Tax Law imposes tax upon:

The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1105 (f) of the Tax Law imposes tax, in part, upon:

(1) Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state, except charges for admission to race tracks, boxing, sparring or wrestling matches or exhibitions which charges are taxed under any other law of this state, or dramatic or musical arts performances, or live circus performances, or motion picture theaters, and except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools

(2)(i) The dues paid to any social or athletic club in this state if the dues of an active annual member, exclusive of the initiation fee, are in excess of ten dollars per year, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars

Section 1116 of the Tax Law provides, in part:

Exempt organizations. (a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

* * *

(4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition

* * *

(b) Nothing in this section shall exempt:

(1) retail sales of tangible personal property by any shop or store operated by an organization described in paragraph (4), paragraph (5) or paragraph (6) of subdivision (a) of this section. . . .

* * *

(d) (1) Except as provided in paragraph (2) of this subdivision, any admissions all of the proceeds of which inure exclusively to the benefit of the following organizations shall not be subject to any of the taxes imposed under subdivision (f) of section eleven hundred five:

(A) an organization described in paragraph (4), (5) or (6) of subdivision (a) of this section

* * *

(3) Admission charges for admission to the following places or events shall not be subject to any of the taxes imposed under subdivision (f) of section eleven hundred five:

* * *

(C) Any admissions to historic sites, houses and shrines, and museums conducted in connection therewith, maintained and operated by a society or organization devoted to the preservation and maintenance of such historic sites, houses, shrines and museums; provided no part of the net earnings thereof inures to the benefit of any private stockholder or individual.

Section 529.7(i) of the Sales and Use Tax Regulations provides, in part:

Sales by exempt organizations. (1) Except as provided in paragraphs (2) through (4) of this subdivision, sales of tangible personal property and services by exempt organizations are exempt from the sales and use tax.

(2) Retail sales of tangible personal property made by any shop or store operated by an exempt organization described in section 1116(a)(4), (5) or (6) are subject to the sales and use tax. A shop or store as used in this section includes any place or establishment where goods are sold from display with a degree of regularity, frequency and continuity as well as any place where sales are made through a temporary shop or store located on the same premises as persons required to collect tax. Vending machines alone do not constitute a shop or store. However, where vending machines are located in a defined area devoted to selling tangible personal property, then sales from such vending machines constitute sales from a shop or store.

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Example 2: An exempt organization operates a gift shop and book store. Sales made by such shop or store are taxable.

Opinion

In this case, Petitioner is an organization described in Section 1116(a)(4) of the Tax Law. Petitioner is working in conjunction with the NPS, the operator of the Statue of Liberty National Monument, to establish the Center to serve as a source of immigration and genealogy information. Petitioner has asked members of the public to contribute to the launch of the Center by becoming "Charter Founders." To become a Charter Founder, Petitioner requires contributions of \$45 or more. After the Center opens, Petitioner will ask members of the public to contribute to the Center by becoming "Sustaining Members."

Petitioner will charge an admission fee currently set at \$5 for access to the Center, which will entitle visitors to use a computer workstation for a thirty-minute session. In addition to the computer workstations, documenting stations will be set up at the Center where Charter Founders and Sustaining Members can use equipment to create archival records of their family's history. Charter Founders and Sustaining Members will be entitled to print-out copies of their digital records in the form of a scrapbook at an additional charge. Charter Founders and Sustaining Members will also be able to purchase additional paper copies and CD-ROM versions of such records.

The Center will contain an interpretive shop where visitors will be allowed to purchase other items relating to immigration and genealogical studies. Pending approval by NPS, the Center currently plans to sell the following items in the interpretive shop: binders for family scrapbooks, journals for genealogical research, historical maps, and framing material. The Center will also provide copies of manifests and other items to visitors for a fee.

Concerning Issue 1, Section 1116(d)(1)(A) of the Tax Law, provides, with certain exceptions, that admission charges that inure exclusively to the benefit of an organization described in Section 1116(a)(4) of the Tax Law, are not subject to sales tax. In addition, Section 1116(d)(3)(C) of the Tax Law exempts from tax any admission charges to historic sites, houses and shrines, and museums conducted in connection therewith, maintained and operated by a society or organization devoted to the preservation and maintenance of such historic sites, houses, shrines and museums, provided no part of the net earnings thereof inures to the benefit of any private stockholder or individual. Petitioner is an organization described in Section 1116(a)(4) of the Tax Law. Moreover, Petitioner was formed to restore, preserve and protect the Statue of Liberty and the Statue of Liberty National Museum, and will operate the Center. Therefore, provided the proceeds from the admission charges to the Center will inure exclusively to Petitioner, pursuant to Section 1116(d)(1) of the Tax Law, the admission charges to the Center will not be subject to sales tax. It appears that the provisions of Section 1116(d)(3)(C) of the Tax Law will also apply to admission charges to the Center.

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With respect to Issue 2, pursuant to Section 1116(b)(1) of the Tax Law, receipts from retail sales of tangible personal property by any shop or store operated by an organization described in Section 1116(a)(4) of the Tax Law are subject to sales and use tax. Pursuant to Section 529.7(i) of the Sales and Use Tax Regulations, a shop or store includes any place or establishment where goods are sold from display with a degree of regularity, frequency and continuity as well as any place where sales are made through a temporary shop or store located on the same premises as persons required to collect tax. Petitioner will be operating a shop or store at the Center as defined by Section 529.7(i) of the Sales and Use Tax Regulations. Therefore, receipts from the sale of reproductions of manifests and other items to visitors at the Center will be subject to sales and use tax. Additional charges made to Charter Founders and Sustaining Members for scrapbooks containing their records, or for additional paper copies and CD-ROM versions of such records, will also be subject to sales and use tax as receipts from retail sales of tangible personal property by a shop or store.

As for Issue 3, pursuant to Section 1105(f) of the Tax Law, dues paid to any social or athletic club in New York are subject to sales tax if the dues of an active annual member, exclusive of the initiation fee, are in excess of ten dollars per year. Tax is also imposed on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars. Since Petitioner is not operating a social or athletic club, the fees paid to become a Charter Founder or Sustaining Member in Petitioner will not be subject to sales tax as a payment of dues. In addition, the fees paid to become a Charter Founder or Sustaining Member in Petitioner, which represent charitable contributions under the Internal Revenue Code, will not be taxable as a payment for admissions to a place of amusement, a payment for the purchase, rental or use of any tangible personal property or a payment for any taxable service.

DATED: July 2, 2002

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