

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

TSB-A-03(20)S  
Sales Tax  
May 8, 2003

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S020422A

On April 22, 2002, the Department of Taxation and Finance received a Petition for Advisory Opinion from Atrium Kosher Catering, Ltd., 7 Route 59, Monsey, NY 10952.

The issue raised by Petitioner, Atrium Kosher Catering, Ltd., is whether a separately stated charge for the rental of a room in which a wedding ceremony is performed is subject to sales tax when such charge is in connection with the catering of the wedding reception in another room at the same location.

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

Petitioner is in the catering business. When Petitioner contracts to cater a wedding, the customer has the option of having the wedding ceremony either outdoors, in the ballroom, or in a special “ceremony room” where chairs are arranged for all of the guests who wish to view the ceremony. After the ceremony, all of the guests return to the ballroom where the meals are served. The “ceremony room” is not used by the wedding party and guests after the ceremony is completed.

Petitioner collects sales tax on the entire fee it charges for catering a wedding. However, there is an additional charge for the “ceremony room,” which is billed separately.

**Applicable Law and Regulations**

Section 1105(d)(i) of the Tax Law imposes sales tax on:

The receipts from every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers (except those receipts taxed pursuant to subdivision (f) of this section):

(1) in all instances where the sale is for consumption on the premises where sold;

(2) in those instances where the vendor or any person whose services are arranged for by the vendor, after the delivery of the food or drink by or on behalf of the vendor for consumption off the premises of the vendor, serves or assists in serving, cooks, heats or provides other services with respect to the food or drink. . . .

Section 527.8 of the Sales and Use Tax Regulations provides, in part:

(a) *Imposition.* Sales tax is imposed on the receipts, including any cover, minimum, entertainment or other charge, from every sale of beer, wine or other alcoholic beverages and food or drink of any nature sold in or by restaurants, taverns or other establishments in this State or by caterers:

(1) in all instances where the sale is for consumption on the premises where sold;

(2) in those instances where the sale is for consumption off the premises and the vendor (or someone acting on behalf of the vendor) after delivery either serves or assists in serving, cooks, heats or provides services with respect to the food or drink . . .

\* \* \*

(c) *Premises.* The term *premises* shall mean the total space and facilities in or on which the vendor conducts his business, including but not limited to parking areas for the convenience of in-car consumption, counter space, indoor or outdoor tables, chairs, benches and similar conveniences.

(d) *Consumption on premises.* The phrase *for consumption on the premises* shall mean that the food or drink sold may be consumed on the premises where the vendor conducts his business.

(e) *Consumption off premises.* The phrase *for consumption off the premises* shall mean that the food, including sandwiches, or drink is intended to be consumed at a place away from the vendor's premises.

\* \* \*

(f) *Caterers.* (1) Sales by caterers.

(i) All charges by caterers selling food or drink who provide serving or assistance in serving, cooking, heating or other services after delivery are taxable. (Emphasis added)

\* \* \*

(iii) Sales of food or drink by caterers where the caterers deliver the items purchased and arrange the food on platters or place the drink in containers so that food or drink is ready to serve guests are taxable.

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*Example 1:* A vendor has contracted to cater a wedding party at a private hall. The caterer will furnish food and drink, music, kosher supervision, bartenders, waiters and waitresses, and coat checking all of which will be billed by the caterer. All the charges are taxable. (Emphasis added)

### **Opinion**

Petitioner's activities as a wedding reception caterer fall within the purview of Section 1105(d)(i) of the Tax Law. See Matter of Hunts Point Palace, Inc., State Tax Commission, June 19, 1986, TSB-H-86(138)S. A caterer's charges for catering prepared food and drink and any "other charge" for the coordination of the event are subject to sales tax under Section 1105(d)(i) of the Tax Law. See Hunts Point Palace, Inc., *supra*. See also Section 527.8(f) of the Sales and Use Tax Regulations.

Petitioner's charge for the use of its wedding ceremony room in connection with its catering of the wedding reception falls within the scope of the term "other charge" specified in Section 1105(d)(i) of the Tax Law. Though in this case Petitioner's facility comprises separate rooms, Petitioner's circumstances are no different than were it to have "rented" its banquet hall a half hour earlier for an additional charge to accommodate the wedding ceremony prior to the reception. The total charge in that case, including the rental of the facility for the wedding (ceremony and reception), would be taxable. Moreover, Petitioner provides for both the use, albeit optional, of the ceremony room and for the sale of food and drink to be consumed on Petitioner's premises. Therefore Petitioner's catering service should be viewed in its entirety as opposed to separate components. Accordingly, the charge for the rental of the ceremony room is an "other charge" to Petitioner's customer sold in conjunction with the sale of food and drink and thus is part of the receipts subject to the sales tax imposed under Section 1105(d)(i) of the Tax Law.

DATED: May 8, 2003

/s/

Jonathan Pessen  
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Technical Services Division

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