

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

TSB-A-11(30)S
Sales Tax
November 16, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION PETITION NO. S110419A

The Department of Taxation and Finance received a petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the receipts from the sale of the fixed-price, pre-paid guided Segway tours it provides in and around the Rochester, New York area are subject to the sales tax imposed by Article 28 of the Tax Law.

Facts

Petitioner is a family business that provides guided Segway tours in and around the Rochester, New York area. Petitioner owns eight (8) Segway two-wheel self-balancing electric vehicles. The tours are fixed price and pre-paid before the tour begins. To go on the tours, a customer must use one of petitioner's Segways. Petitioner does not provide Segways except in relation to persons using them to go on Petitioner's tours. The tour guides are familiar with the area traversed on the tour. According to Petitioner's website, "[a]fter a short safety orientation and training session you'll be gliding like an expert, enjoying the great scenery Upstate NY is famous for." Petitioner's website describes three different scenic tour paths. The only break points described in regard to the three tours are breaks for water.

Analysis

The specific issue raised is whether the sale of the Segway guided tour ticket constitutes the furnishing of an exempt tour service or a taxable sale or rental of tangible personal property.

Section 1105 of the Tax Law imposes a sales tax on receipts from the retail sale of tangible personal property and from certain enumerated services. Tax Law §§ 1105 (a), (c). Tour services are not among the services taxable under section 1105(c) of the Tax Law. Section 1101(b)(5) of the Tax Law defines "sale" as any transfer of title or possession or both, or the rental, lease or license to use for a consideration.

Sales and use tax regulation 20 NYCRR Section 526.7(e)(4) states that the "transfer of possession with respect to a rental, lease or license to use, means that one of the following attributes of property ownership has been transferred: (i) custody or possession of the tangible

personal property, actual or constructive; (ii) the right to custody or possession of the tangible personal property; (iii) the right to use or control or direct the use of tangible personal property." The customer has physical possession of the Segway during the tour and the right to use and control it during the tour. While Petitioner also provides a guide, given the emphasis on the Segway on Petitioner's website and the lack of any stops on the tour, apart from water breaks, it appears that the primary thing Petitioner is selling is the right to use the Segway. Accordingly, we conclude that the sale of the Segway tour ticket constitutes a taxable rental or license to use tangible personal property subject to sales tax under section 1105 of the Tax Law.

DATED: November 16, 2011

/S/

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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.