

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

TSB-A-15(30)S
Sales Tax
July 15, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120507A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] ("Petitioner"). Petitioner asks whether its receipts for a party cruise around New York Harbor are subject to sales tax when the price the passenger pays includes a meal and drinks. Petitioner also asks if the charge for the cruise would be subject to sales tax if it were to offer two types of tickets: one just for the cruise without any meal, and one that would include a meal.

We conclude that when Petitioner provides passengers with a meal and beverages as part of the regular cruise fee, the entire charge for the cruise will be subject to sales tax under Tax Law § 1105(d) or §1105(f). If a ticket for a cruise does not entitle the passenger to the provision of any food or drink, the ticket receipts would not be subject to sales tax.

Facts

Petitioner leases vessels that it uses to provide public cruises around New York Harbor. Each vessel can accommodate over 100 passengers. Petitioner markets the cruises as "party cruises." The cruises, which last approximately three and a half hours, begin and end at the same location. The cruises begin in the late afternoon or in the early evening. Some cruises end around midnight. The cruises are usually conducted during weekends or holidays.

The vessels cruise New York Harbor and sail around or near famous landmarks, such as Ellis Island, Liberty Island, the Battery, and the Brooklyn Bridge. Petitioner emphasizes that it is offering a sightseeing cruise. Petitioner's web site includes testimonials from passengers about the views of the City and harbor afforded by the cruises.

Each vessel has an area with tables and chairs for dining (the main cabin). The tables are covered with table cloths. This cabin cannot simultaneously accommodate all potential passengers on a cruise. For example, a vessel might accommodate 120 persons but the main cabin might seat only 80 persons. Petitioner does not accept reservations for the dining in this area. Seating is on first come, first use basis. Parties of passengers have no guarantee that they will be able to sit together in the main cabin.

Petitioner provides what it describes as a "hot appetizer buffet" to its passengers during the cruises. Petitioner's advertisements mention the buffet, but also indicate that it is not an unlimited buffet. The meal is available for one half hour during a cruise. Passengers may sit in the main cabin at any time during a cruise. The use of the main cabin is not restricted to when the buffet is available. The food is prepared offsite by a third-party caterer hired by Petitioner. The caterer has staff on the vessel who dispense the food to Petitioner's passengers at the buffet

tables. The caterer bills Petitioner for its food service and collects sales tax from Petitioner on its receipts.

Each vessel contains a bar serving liquor operated by the boat owner, who has a liquor license to operate the bar. Petitioner gives each passenger two tickets that can be used to obtain two drinks at the bar on the vessel. Bottled water, soda, domestic beer, wine and non-premium brands of liquor may be obtained with these tickets. The boat owner charges Petitioner a fee for the drinks served at the bar in exchange for beverage tickets. The boat owner collects sales tax from Petitioner on its receipts for these drinks. Passengers must pay cash at the bar to obtain additional drinks. The boat owner keeps all these receipts. The vessels have a lounge area contiguous to the bar.

While passengers are permitted to bring food on the vessel, the boat owner prohibits passengers from bringing alcoholic beverages onboard. This policy is enforced in part to encourage bar sales, but also for security and safety reasons.

Each cruise has a disc jockey who plays recorded music and provides information and commentary about the sights around New York Harbor. The amount of music played depends on the type of cruise. Each vessel has an indoor area where passengers can dance.

Analysis

Tax Law § 1105(d) 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. Petitioner is operating an establishment subject to sales tax under Tax Law § 1105(d) when it provides both beverages and meals during its cruises. It provides facilities for its passengers to consume meals and beverages on the vessels. The main cabin contains a buffet, tables with cloth coverings and chairs. While passengers can use this cabin when the buffet is not being served, it constitutes a dining area when the buffet is served. The vessels also include a bar area with a contiguous lounge.

Even though Petitioner is providing what it characterizes as a sightseeing cruise in conjunction with the provision of food and drink, the cruise ticket is subject to sales tax under Tax Law § 1105(d) because the food and drink is not incidental to the boat cruise. *See TSB-A-07(27)S.* Food and drink provided in connection with a cruise are incidental when they are a de minimis element of the cruise, no significant time and/or expense is devoted to the preparation or serving of the food or drink, and no separate charge is made for the food and drink. *See TSB-A-98(46)S.* The types of food and drinks that Petitioner provides and the means Petitioner uses to provide them establish that the provision of food and drink is not an incidental aspect of the cruise.

Petitioner pays a caterer to provide catering services on board the vessel. The caterer serves hot food that takes significant time to prepare. The caterer's staff dispenses the food to passengers. Petitioner also pays the boat owner to serve drinks from the onboard bar to Petitioner's passengers. The drinks include alcoholic beverages, which require the boat owner to

exercise its liquor license to dispense. In summary, Petitioner pays vendors to provide services subject to sales tax under Tax Law § 1105(d). Petitioner does this so its passengers can consume hot meals and beverages in a dining area and a bar area even though the provision of these items is not a necessity for a cruise lasting about three hours. Therefore, based on the facts presented, Petitioner's receipts for cruises would be subject to sales tax under Tax Law § 1105(d).

Petitioner also asks whether its receipts from ticket sales would be taxable if the ticket did not entitle the passenger to food or drink. As long as the price of the ticket is essentially for a sightseeing cruise and does not entitle the passenger to food or drink that is more than incidental to the charge for the cruise itself, the receipts from ticket sales will not be subject to sales tax.

/S/

DATED: July 15, 2015

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.