



## **Advisory Opinion: TSB-A-24(44)S**

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [ REDACTED ] (“Petitioner”). Petitioner asks whether its purchase or rental of certain tangible personal property (“TPP”) and services in connection with its event planning services can be purchased for resale; whether it is providing a taxable catering service when food is provided under certain circumstances; and whether an agency relationship with its customer affects the taxability of its purchases.

We conclude that for events at which no food or catering is provided, Petitioner can purchase or rent for resale taxable TPP and services that are sold to a customer in the same form as purchased. At events where Petitioner is providing a catering service on and after June 1, 2018, Petitioner may purchase prepared food for resale. However, Petitioner cannot make purchases for resale when it acts as the agent of its customer.

## **Facts**

Petitioner provides event planning services to customers, consisting of event design, production, and management services. Types of events Petitioner produces include product launches, press conferences, trade shows, or client appreciation events. Prior to an event, Petitioner plans the overall design of the event; coordinates audio, video, and print production services; provides event advertising & promotion services; and coordinates and secures guest speakers, labor, equipment and supplies needed to conduct the event. At the event, Petitioner provides onsite event staff, production designers, and event managers.

Petitioner furnishes customers with detailed invoices itemizing the charges for TPP, services, and expense reimbursements. Pursuant to its contracts with customers, Petitioner may hire subcontractors as it deems necessary to provide its services. However, Petitioner remains responsible for the obligations and services performed by subcontractors, and the work is deemed to be performed by Petitioner.

Approximately 80% of Petitioner’s events have no food or catering services. At events where food or catering services are provided, Petitioner and its employees do not deliver, prepare or serve the food. Rather, Petitioner arranges for the services of an unrelated third-party caterer. Petitioner sometimes acts as the agent of its customer in arranging catering services. In some of these cases, the caterer bills the customer directly.

## **Analysis**

Petitioner presents the following issues:

Issue 1 – Petitioner conducts events in New York at which no food or catering is provided. Petitioner leases a venue and purchases TPP, including tables, chairs, chair covers, linens, tents, promotional materials, invitations, mailers, flyers, AV equipment, favors, flowers and décor. Petitioner also purchases services, including billboard advertising, parking and valet services, band or disc jockey services, photographers or videographers, AV operators and event security services. Petitioner separately invoices its customers for each purchase of TPP and services. Petitioner asks whether it can purchase the TPP and services described exempt from sales tax as purchases for resale, and whether it must collect sales tax on its charges to its customer.

Sales tax applies to the receipts from every retail sale of TPP, except as otherwise provided for in the Tax Law, and the receipts from every sale (excluding sales for resale) of certain enumerated services. See Tax Law § 1105(a), (c). Among the taxable services are the installation of TPP that remains TPP after installation. See Tax Law § 1105(c)(3).

Tangible personal property and services are considered purchased for resale where: (i) TPP will be resold to the customer as such, or as a physical component part of TPP; (ii) TPP is used in performing taxable services where such TPP becomes a physical component part of the TPP upon which the services are performed or will be actually transferred to the purchaser of the service in conjunction with the performance of the service; or (iii) the service is for resale. See 20 NYCRR 532.4(d)(1). In order to qualify as a purchase for resale exempt from sales tax, property and services must be purchased exclusively for resale. See *Matter of P-H Fine Arts Ltd.*, 227 AD2d 683 (3d Dep’t 1996). We note that whether the TPP at issue here is resold by Petitioner to its customers or consumed by Petitioner itself in performing a service and not actually transferred to the customer in conjunction with the performance of Petitioner’s event planning service is a question of fact that is not susceptible to resolution within the content of an Advisory Opinion. See TSB-A-88(16)S.

Petitioner separately charges for the TPP provided to its customer. In this scenario, where Petitioner purchases the TPP listed above (except for AV equipment, which is more specifically discussed below), separately states the charge to the customer for such TPP, and the charge is proportionately related to the quantities of TPP provided, it may purchase that TPP for resale. See *Echostar Satellite Corp. v. Tax Appeals Tribunal*, 20 NY3d 286 (2012). However, TPP that is used to perform any service, or where the separately-stated charge to the customer is not in proportion to the quantity of items provided, may not be purchased for resale. See *id.*; TSB-A-03(40)S.

Petitioner may purchase taxable services for resale where such services are provided to a customer in the form in which purchased, or where such services become a component part of a taxable service that Petitioner performs. See 20 NYCRR 526.6(c)(1). When subcontractors perform taxable services for resale as such for an event held in New York, Petitioner may purchase these services for resale.

When making a purchase of taxable TPP or services, Petitioner should timely provide the vendor with a properly completed Form ST-120 - *Resale Certificate*. Petitioner must collect sales tax on taxable TPP and services when they are resold to a customer.

It is not necessary for Petitioner to provide a resale certificate when purchasing TPP or services that are not subject to sales tax. Specifically addressing the services listed by Petitioner, the services of a band or disc jockey are not among the services subject to tax under Tax Law § 1105(c). Similarly, the provision of valet service is not among the services subject to sales tax, provided that those services do not include a charge for parking, garaging, or storing of motor vehicles, which are taxable under Tax Law § 1105(c)(4). See TSB-M-08(14)S. If the valet service is sold with parking for a single fee, the entire charge is taxable.

Petitioner's leasing of a venue that does not include additional services or the use of equipment is considered payment for the license to use real property and is not subject to sales tax. See TSB-A-02(39)S; TSB-A-87(23)S.

Advertising services that consist of consultation and development of advertising campaigns, and placement of advertisements with the media without the transfer of tangible personal property are not subject to tax. See 20 NYCRR 527.3(b)(5). If Petitioner arranges for and purchases advertising space on a billboard for a customer's advertisement, such purchase is considered the purchase of advertising services that is not subject to tax. See *id.* However, all purchases by Petitioner of TPP and services that may be used to render advertising services are taxable to Petitioner and Petitioner may not purchase such TPP for resale.

The purchase of the services of a photographer or videographer to photograph or film an event is not itself a taxable transaction, and any photographs or videos delivered solely electronically are not subject to sales tax. Similarly, royalty payments for permission to reproduce the photographic depiction itself in or on another product (e.g., poster, brochure, advertising copy, etc.) are not receipts from the sale, lease or license to use the photograph itself. See 20 NYCRR 526.7(f). If the charges to the customer for the use of the photograph are in the nature of a royalty, the transfer of temporary possession or custody of the photograph to the customer for the sole purpose of making the reproduction (i.e., incorporating the photograph into a poster, book cover, brochure, etc.) is not considered to be a transfer of possession that would convert the royalty right into a taxable use. See *id.*; TSB-A-05(34)S; TSB-A-92(60)S. However, if any use other than mere reproduction is made of the photographs or videos, or the charges to Petitioner include the sale of negatives, slides, prints or films in tangible form, whether or not separately stated, the entire receipt is subject to sales tax as receipts from the sale of TPP. See TSB-D-96(16)S. Petitioner may purchase such TPP for resale if the negatives, slides or prints are resold to a customer as such.

Petitioner can also purchase the following taxable services for resale, when provided in the same form as purchased: labor to set up (install) equipment, parking services, and security services. While the service of setting up equipment is a taxable service under Tax Law § 1105(c)(3), the service of dismantling equipment is not an enumerated taxable service. If the services of installation and dismantling equipment are purchased together for a single charge, the entire charge would be subject to tax and may be purchased by Petitioner for resale, taxable to the customer.

To the extent that Petitioner's design services include selecting the décor or layout of the event, they would constitute interior decorating services. Interior decorating services are subject to State and local sales taxes, except where those services are provided at an event in New York City, where they would only be subject to State tax. See Tax Law § 1105(c)(7); TSB-M-95(13)S; TSB-A-07(17)S. If Petitioner purchases taxable interior decorating services and resells them to its customer, it may purchase those services for resale.

Petitioner may purchase or rent TPP exempt from sales tax if it is purchased or rented exclusively for resale or will become a physical component part of TPP resold to a customer, such as: tables, chairs, linens, tents, chair covers, promotional materials, invitations, mailers, flyers, favors, flowers, and decorative items.

Issue 2 – Petitioner asks whether certain items can be purchased for resale for an event conducted within New York State at which food or catering is provided. These items include the leasing of a venue, and the services of billboard advertising, parking & valet services, band or disc jockey services, photographers or videographers, AV operators, event security services, wait staff and bartenders. Petitioner also asks whether the following items of TPP can be purchased for resale at such an event: tables, chairs, chair covers, linens, tents, promotional materials, invitations, mailers, flyers, AV equipment, favors, flowers, décor, portable bars or serving stations, silverware, glassware, ice, vessels for coffee or tea, liquor, soft drinks, bottled water, alcoholic beverages, juices both containing more and less than 70% natural fruit juice, ice served in drinks, candy, confectionary, prepared foods and unprepared foods.

Tax Law § 1105(d) imposes sales tax on the receipts from every sale, including resale, of food or drink sold in or by a restaurant or similar establishment in New York State, or by a caterer in all instances where the sale is for consumption on the premises where sold. Where such sale is for consumption off the premises where sold, sales tax is imposed on the receipts if the vendor or someone acting on behalf of the vendor either serves or assists in serving, cooks, heats or provides services with respect to the food or drink.

When Petitioner arranges for the food and beverages at an event and bills the customer for those services, it is providing a catering service. A caterer's entire charge to its customer is taxable. 20 NYCRR 527.8. In addition, any TPP or services used or consumed by Petitioner in performing catering services cannot be purchased for resale (other than taxable food and beverages on or after June 1, 2018, as described below). See 20 NYCRR 527.8(f)(2)(i); TB-ST-110. In this scenario, Petitioner must pay sales tax on TPP used to provide its services, including: tables, chairs, tents, linens, napkins, chair covers, portable bars, serving stations, silverware, glassware, serving utensils, audio/visual equipment, ice used to chill food or drinks before serving, vessels for coffee or tea, décor, invitations, mailers, flyers, and AV equipment. See TSB-M-10(3)S. However, floral arrangements may be purchased for resale if all the requirements of 20 NYCRR 527.8(f)(2)(v) are met, including that the customer may opt not to have flowers or to hire a florist of its own choosing, and that the customer has the right to remove the floral arrangements.

In addition, if Petitioner maintains its own inventory of TPP, such as tables and chairs, it may not purchase such inventory items for resale as they are not purchased exclusively for resale given that Petitioner is acting as the caterer in certain situations. If Petitioner does not maintain its own inventory, Petitioner may use form ST-120 and check the "Single-Use Certificate" box instead of the "Blanket Certificate" box, as its ability to purchase for resale changes from event to event.

Prior to June 1, 2018, Petitioner was required to pay tax on all purchases of catering services and prepared food, and then claim a credit against the tax Petitioner is required to collect on the subsequent sale of catering services to its customer. Effective June 1, 2018, otherwise taxable prepared food and beverages sold by restaurants or caterers may be purchased for resale and not subject to sales tax until the taxable food and beverages are sold to the ultimate consumer. See Tax Law § 1105(d)(1), as amended by Chapter 59 of the Laws of 2018. Therefore, on and after June 1, 2018, Petitioner may purchase prepared food and drink for resale and collect tax when Petitioner resells its catering services to its customers (such as: heated foods, arranged platters of cold cuts, sandwiches, hot coffee and hot tea).

Petitioner does not need to furnish a resale certificate when purchasing nontaxable food and beverages, such as meats, vegetables, fruits, etc., and fruit juice containing at least 70% natural fruit juice. Taxable food and drink items, including candy and confections, fruit drinks containing less than 70% natural fruit juice, soft drinks, soda, bottled water, beer, wine and other alcoholic beverages, and ice served in drinks, may be purchased for resale when sold to a customer as part of the catering service. See 20 NYCRR 527.8(f)(2)(ii).

When Petitioner purchases taxable services that it uses to provide the catering services, it must pay tax to the service provider and it cannot issue a resale certificate nor claim a credit for the tax paid on such purchases. See *id.* Taxable services that are not considered to be resold by a caterer include decorating services, parking services, security services, setting up (installing) TPP and AV services/operators. See 20 NYCRR 527.8(2)(ii); *Matter of 21 Club, Inc.*, (Tax Appeals Tribunal 2008).

As in Issue 1, purchases of the following services are not taxable to Petitioner because they are not services subject to tax: bands, disc jockeys, waitstaff, bartenders, photographers, videographers, valet staff, and the leasing of a venue without additional services. However, these services are included in Petitioner's catering service and, therefore, Petitioner must charge sales tax to its customer on these services, regardless of whether they are separately stated. See *Matter of Stephen Gallagher, Inc.*, Tax Appeals Tribunal, August 3, 2000.

Issue 3 – Petitioner asks whether an event conducted within New York State would be deemed catered by Petitioner and therefore entirely subject to sales tax when the food or catering is provided only as a convenience and incidental to the event.

When the food and drink are merely incidental to the event (e.g., coffee, tea, cookies), the charge for the incidental food and drink items are subject to tax. However, it would not cause the entire charge for conducting the event to be taxable as long as the charge for such food and drink is separately stated and reasonable in relation to the overall charge. See TSB-A-15(30)S; TSB-A-15(21)S. Food and drink are not merely incidental to an event if significant time and/or expense is devoted to the preparation or serving of such food and drink.

Issue 4 – Finally, Petitioner asks whether its entire charge for its event management service would be subject to tax when it acts as agent of the customer and hires an unrelated third-party as a caterer on behalf of the customer, and either: (i) the caterer invoices Petitioner separately and Petitioner pays the catering invoice separately; or (ii) the caterer contracts with and invoices the customer separately and the customer pays the catering invoice separately. Petitioner submits that it would not prepare, serve or deliver the food and all food service would be provided by the caterer.

If a customer independently hires an unrelated third-party caterer, Petitioner would not be considered to be providing a catering service and otherwise nontaxable charges by Petitioner for services or TPP would not be subject to tax. See TSB-A-98(46)S.

However, if Petitioner arranges for catering services as a customer's agent, Petitioner may not issue a resale certificate and must pay sales tax to the vendor as an agent of the customer, regardless of whether Petitioner is invoiced separately for the catering service. Tax Law § 1105(d)(i)(2) imposes sales tax on food and drink, "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" (emphasis added). If Petitioner arranges for the food and drink, the event is still deemed to be catered by Petitioner, despite any agency relationship, and all charges by Petitioner to its customer related to the customer's event are taxable. See *Matter of Chemical Bank v Tully*, 94 AD2d 1 (3d Dep't 1983); *Matter of Stephen Gallagher, Inc.*, Tax Appeals

Tribunal, August 3, 2000. Any expenses incurred by Petitioner for a catered event that are included in the overall charge to the customer are also taxable; regardless of whether those charges are separately listed on the customer's bill or invoice.

DATED: October 8, 2024

/s/

---

MARY ELLEN LADOUCEUR  
Principal Attorney

**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.