

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-83(35)S
Sales Tax
July 25, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820817A

On August 17, 1982 a Petition for Advisory Opinion was received from The River Club of New York, Inc., 447 East 42nd Street, New York, New York 10022.

The issue raised is whether a social or athletic club must collect sales tax from a member on a charge for engaging professional musicians to perform at the member's private party, where such party is catered by the club and where such charge is separately stated on the bill presented to the member.

Petitioner, a private social and athletic club, has facilities which are used by individual members for private parties. Petitioner is frequently asked by the member planning a private party to provide the food and drink for the party. On occasion a member desiring to have professional musicians entertain at his private party will ask Petitioner to assist in making the necessary arrangements. Petitioner contends that when so asked Petitioner will engage the professional musicians on behalf of the member. Petitioner also contends that, "as a convenience to the member," Petitioner will pay the musicians and state the expense as a separate item on the bill presented to the member.

Section 1105(d)(i) of the Tax Law imposes a 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 " (Emphasis added).

Section 527.8(f) of the Sales and Use Tax Regulations provides, in part, as follows:

"Sales by caterers. (1) All charges by caterers selling food or drink who provide serving or assistance in serving, cooking, heating or other services after delivery, are taxable.

...

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."

When Petitioner provides food and drink for a member's private party, and provides related services after delivery, Petitioner is acting as a caterer. Accordingly, pursuant to the provisions of Section 1105(d)(i) of the Tax Law, Petitioner must collect sales tax on the total amount charged to the member, including the charge for the professional musicians. See in this regard Stouffer

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Management Food Service, Inc. v. Tully, 98 M. 2d 1128, aff'd 69 A.D. 2d 1023, which held fees paid to a caterer constituting reimbursements of expenses to be subject to tax. This decision effectively overruled two contrary, earlier Tax Commission decisions, Matter of Ocean Catering Corp., State Tax Commission, December 29, 1970, and Matter of Starlite Caterers, Inc., State Tax Commission, October 2, 1978, TSB-H-79(7)S, insofar as these decisions may be understood to have held such reimbursed expenses not to constitute taxable receipts. It is to be noted that the Stouffer decision has been followed in a recent Tax Commission hearing decision, Matter of Farrell Lines Incorporated, State Tax Commission, October 6, 1982, TSB-H-83(53)S.

DATED: June 27, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau