

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

TSB-A-85(33)S
Sales Tax
August 21, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S841026B

On October 26, 1984 a Petition for Advisory Opinion was received from Outdoor Pursuits, Inc., P.O. Box 248, East Syracuse, New York 13057.

The issue raised is the extent to which the products and services provided by Petitioner are subject to New York State and local sales tax.

Petitioner will be entering into the business of arranging charter fishing and hunting trips to the Lake Ontario region of New York State. These will be "package deals" that can be tailored to the wishes of the participants. Participants may select the length of time of the trip and include a variety of options such as: hotel accommodations; vehicle rentals; vehicle fuel; box lunches; beverages; chartered boat and captain; preparation of fish caught; shipping coolers; meals; gratuities and fishing licenses.

Petitioner states that it will pay all charges to the providers of the various products and services and Petitioner will collect a flat amount from the participants which will include an element of profit.

The taxability of the items sold by Petitioner will be affected by the way in which the customer's bill is prepared.

I

If a bill itemizing the various charges is rendered to the customer, the sales tax status of the items will be as listed below. It is assumed that each item includes a proportionate amount of the element of profit.

The following charges to the customer are subject to State and applicable local sales tax:

Hotel accommodations. Tax Law 1105(e)

Vehicle rental; vehicle fuel, shipping cooler. Tax Law 1105(a).

Box lunch; meals, beverages. Tax Law 1105(d).

Preparation of fish caught. Tax Law 1105(c)(2).

The rental of the charter boat, where the customer has the right to direct when and where the boat is to go, is subject to tax. Tax Law 1105(a). However, if the owner of the boat merely allows the customer on board to fish at a place and time selected by the owner, the charge is an admission charge. In this case, since the charge is for admission to a facility for a sporting activity in which the customer is a participant, the admission charge is exempt from tax. Tax Law 1105(f)(1).

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Gratuities are includable as part of the receipt and are subject to or exempt from tax to the same extent that the associative charge is subject to or exempt from tax. However, gratuities are not subject to tax when such gratuities are: separately stated on the invoice given to the customer; specifically designated as a gratuity and; paid over in total to employees. 20 NYCRR 527.8(1).

The charge for the fishing license is not subject to tax.

II

If the bill rendered to the customer makes no separate statement of the otherwise non-taxable and taxable charges, the total flat fee charge is subject to tax. 20 NYCRR 527.1(b); La Cascade, Inc. v State Tax Commission, 91 AD 2d 784.

Whether Petitioner itemizes the individual taxable and non-taxable items on its billing or merely charges a flat fee, the Tax Law requires that "[i]f the customer is given any sales slip, invoice, receipt or other statement or memorandum of the price. . . the tax shall be stated, charged and shown separately on the first of such documents given to him."

DATED: July 30, 1985

s/Frank J. Puccia
Director
Technical Services Bureau

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