

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

TSB-A-91 (18)S
Sales Tax
February 11, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900816C

On August 16, 1990 a Petition for Advisory Opinion was received from DiMarco, Abiusi, Pascarella & Firnstein, CPA's, Suite 104, 4 Clinton Square, Syracuse, New York 13202-1074.

The issues raised by Petitioner, DiMarco, Abiusi, Pascarella & Firnstein, CPA's, are whether:

1. Sales tax is imposed on receipts resulting from rents collected for the leasing of a complete parking garage (parking lot, walls, structural supports, utility rooms, light fixtures, etc.) as opposed to specific parking spaces.

2. If a commercial building owner leases a complete parking garage from a third party and the commercial building owner permits some of its tenants to use the parking spaces at no cost to those tenants, is the rent paid by the commercial building owner to the parking garage owner exempt from sales tax as a sale for resale.

A commercial building ("Building") exists contiguous to a parking garage ("Garage"). Building is physically connected to Garage. Garage is not a part of premises occupied solely as a private one or two-family dwelling.

Building is owned by a New York general partnership and Garage is owned by a New York corporation. The owners of Building and Garage are not identical. The owners of Building are engaged in the business of providing commercial office space. The owner of Garage is engaged in the business of providing parking spaces for motor vehicles.

The owners of Building will be leasing Garage, in its entirety but the owner of Garage will continue to operate Garage. The owners of Building will pay the owner of Garage a fixed monthly rent. This monthly rent paid to it will be its only source of income. All expenses of operating and maintaining Garage (ie: taxes, utilities, repairs, etc.) will be paid for by the owner of Garage with the monthly rental proceeds received from the owners of Building. The renting of Garage by the owners of Building is a critical function of providing parking for its tenants.

The owners of Building have written leases with their tenants. Some of the leases provide that they will provide a certain number of parking spaces in Garage at no additional cost to the tenant. They can allocate more or less parking spaces to the tenant and no corresponding increase or decrease in the tenants' rent paid to them will be required. They will not collect any income from these tenants specifically for the tenants' use of the parking spaces in Garage. For the leases that they have with tenants that do impose specific parking charges for use of Garage, they will collect the required sales tax.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.--. . .there is hereby imposed and there shall be paid a tax. .
.upon:

(c) The receipts from every sale, except for resale of the following services:

(6) Providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles.

Section 526.6(c)(1) of the Sales and Use Tax Regulations states, in part:

Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

Article 28 of the Tax Law imposes a sales tax applicable to the sales of tangible personal property and enumerated services. Receipts from the sale of real property are not included within the ambit of Article 28. Receipts from the leasing, or the licensing to use of real property, are also generally not subject to tax under said Article. Miller, Addison, Steele, Inc.; Adv Op St Tx Comm, August 6, 1981 TSBA-81(13)S.

However in the instant case the transaction will involve more than the mere leasing of real property, since the owner of Garage as part of the transaction will maintain and operate the parking facility which it has leased to the owners of Building. The activities of the owner of Garage under these circumstances will constitute the providing of the service of parking, garaging or storing of motor vehicles and thus the receipts that will be received by it from the owners of Building will be subject to sales tax in accordance with the provisions of Section 1105(c)(6) of the Tax Law.

With reference to the issue of resale in the instant case, the owners of Building will lease Garage in its entirety for the purpose of providing parking for their tenants with whom they will have written leases. They will enter into some leases whereby they will provide parking spaces at no additional charge to the tenants. However, they will also enter into leases whereby specific parking charges will be imposed on the tenants. Therefore, they will not be selling parking services under those leases which do not impose a specific or additional charge for tenant parking and therefore they will not have leased Garage for the exclusive purpose of resale.

Accordingly, the transaction between the owners of Building and the owner of Garage will be considered to be a sale of parking services not for the exclusive purpose of resale and thereby the

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receipts from such transaction will be subject to the sales tax imposed under Section 1105(c)(6) of the Tax Law. However, since they collect sales tax on parking charges from some tenants, they will be allowed to claim a credit on the applicable sales and use tax return for sales tax paid to the owner of Garage on the applicable percentage of parking spaces which they lease to tenants for a consideration in accordance with Section 526.6(c)(1) of the Sales and Use Tax Regulations.

DATED: February 11, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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