

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

TSB-A-94 (18)S
Sales Tax
April 28, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940303A

On March 3, 1994, a Petition for Advisory Opinion was received from Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203.

The issue raised by Petitioner, Niagara Frontier Transportation Authority, is whether Petitioner or its Agent, Ampco System Parking, (hereinafter "Ampco") is required to collect and remit to the Department of Taxation and Finance sales tax on receipts received from its customers to park in parking lots and at metered parking spaces located at the Greater Buffalo International Airport.

Petitioner is a body corporate and politic, constituting a public benefit corporation. Petitioner is organized and existing pursuant to Chapter 717 of the Laws of 1967 of the State of New York, as amended. Pursuant to Section 1299-d.1 of the New York Public Authorities Law (hereinafter the "Public Authorities Law") Petitioner's purposes are the continuance, further development and improvement of transportation and other related services within the Niagara Frontier transportation district (which consists of the counties of Erie and Niagara in the State of New York) including, but not limited to, transportation by railroad, omnibus, marine and air, and to develop and implement a unified mass transportation policy for the district. As set forth in Section 1299-d.2 of the Public Authorities Law, the enabling legislation that created the authority states that such purposes "are in all respects for the benefit of the people of the state of New York and the authority shall be regarded as performing an essential governmental function in carrying out its purposes and in exercising the powers granted by [Title ii-A of the New York Public Authorities Law]."

Pursuant to the authority granted to Petitioner under Article II-A of the Public Authorities Law, Petitioner owns and operates a metropolitan bus transportation system in Erie and Niagara counties, light rail rapid transit system in the City of Buffalo, a bus terminal in the City of Buffalo and a bus terminal in the city of Niagara Falls, the small Boat Harbor and the Port of Buffalo, the Greater Buffalo International Airport and the Niagara Falls International Airport.

Petitioner owns three parking lots at the Greater Buffalo International Airport (the "Airport") - two short-term lots where customers are charged for parking by the half hour (up to a maximum amount per day) and one long-term lot where customers are charged for parking by the hour (up to a maximum amount per day and a maximum amount per week). Petitioner also owns a number of metered parking spaces near the entrances to the Airport's two terminals.

Petitioner entered into an Agreement with Ampco dated February 1, 1994 (the "Agreement"). Pursuant to Section 2.1 of the Agreement, Petitioner retained Ampco to act as Petitioner's limited agent with authority to purchase goods and services in accordance with Petitioner's procurement

guidelines, to collect parking lot and meter receipts during the term of the Agreement and to perform other services with respect to the parking facilities at the Airport. Moreover, pursuant to Section 32.1 of the Agreement the term of the Agreement is for two years, commencing February 1, 1994 and ending on January 31, 1996, unless sooner terminated. Petitioner has the right to extend the term of the Agreement for two years.

Pursuant to Section 3.1 of the Agreement, Ampco is required to operate the parking facilities as a first-class motor vehicle parking facility for the public, affording parking privileges to all person operating motor vehicles who have need for the parking services provided at the Airport and who have agreed to pay for such services. Further, Section 3.5.d of the Agreement provides that Ampco employees will collect the parking receipts at toll booths located at the exits to the parking lots. Ampco is required to provide on-premises labor to perform cashier functions at toll exit gates at, the parking facilities. Moreover, Section 3.7 of the Agreement provides that Ampco is responsible for collecting revenues from the meters at the metered parking spaces.

Pursuant to Section 4.2 of the Agreement, the parking rates charged for the parking facilities at the Airport must be approved by Petitioner. Pursuant to Section 4.3 of the Agreement, Ampco is required to collect and hold in trust for and on behalf of Petitioner the total parking receipts collected from parking customers and to deposit them daily in a bank designated, in writing, by the Petitioner, including any cashier overages received by Ampco in operation and management of the parking operation.

Pursuant to Section 5.1 of the Agreement, Ampco receives a management fee for operating the parking facilities equal to certain percentages of the net parking receipts, calculated on a monthly basis. In addition, pursuant to Section 5.2 of the Agreement, Ampco is entitled to be reimbursed for certain operating expenses. Moreover, pursuant to Section 5.3 of the Agreement, Ampco is required to pay to Petitioner the net parking receipts (which does not include sales tax, if applicable) and sales taxes, less its fee, by federal wire transfer within ten calendar days of the end of each month.

Section 27.1 of the Agreement provides that Ampco is responsible for collecting sales tax on parking revenue and remitting it to Petitioner. However, if it is determined that neither Petitioner nor Ampco is required to collect sales tax on parking receipts, this provision would be deleted from the Agreement.

Section 1105 of the Tax Law imposes sales tax upon:

- (a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

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

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(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 to family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles.

Section 1116 of the Tax Law provides, in pertinent part, as follows:

Sec. 1116. Exempt organizations--(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or an of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons; (emphasis added)

Section 1299-c of the Public Authorities Law provides, in part, as follows:

1. There is hereby created the "Niagara Frontier transportation authority." The authority shall be a body corporate and politic constituting a public benefit corporation...

* * *

5. The authority shall be a "state agency" for the purposes of sections seventy-three and seventy-four of the public officers law.

Section 1299-o of the Public Authorities Law provides, in pertinent part, as follows:

It is hereby found, determined and declared that the creation of the authority and the carrying out of it purposes is in all respects for the benefit of the people of the state of New York and for the improvement of their health, welfare and prosperity and is a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this title. Without limiting the generality of the following provisions of this section, property owned by the authority, property leased by the authority and used for transportation purposes, and property used for transportation purposes by or for the benefit of the

authority exclusively pursuant to the provisions of a joint service arrangement or of a joint facilities agreement or trackage rights agreement shall all be exempt from taxation and special ad valorem levies. The authority shall be required to pay no fees, taxes or assessments, whether state or local, except special benefit assessments if said property is located in a special benefit district, including but not limited to fees, taxes or assessments on real estate, franchise taxes, sales taxes or other excise taxes, upon any of its property, or upon the use thereof, or upon its activities in the operation and maintenance of its facilities or on any fares, tolls, rentals, rates, charges or other fees, revenues or other income received by the authority and the bonds of the authority and the income therefrom shall at all times be exempt from taxation, except for gift and estate taxes and taxes on transfers...(emphasis added)

In Town of North Hempstead v. Regan, 1991, 171 A.D.2d 165, 574 N.Y.S. 2d 851 the Court held that governmental entities providing off-street parking for constituents were not exempt from collecting sales tax imposed on revenues received from off-street parking fees since municipalities were "vendors" of services "of a kind ordinarily sold by private persons," notwithstanding that their off-street metered parking fields served public interest in aiding free flow of traffic.

Pursuant to Section 1299-c of the Public Authorities Law, Petitioner is a body corporate and politic constituting a public benefit corporation. Pursuant to Section 1116(a)(1) of the Tax Law and Section 1299-o of the Public Authorities Law, as a public benefit corporation Petitioner, or its agent Ampco, are exempt from the payment of sales tax as a purchaser, user or consumer of tangible personal property or services. However, pursuant to Section 1116(a)(1) of the Tax Law where Petitioner is the vendor of services or property of a kind ordinarily sold by private persons Petitioner is required to collect sales tax on the receipts received from the sale of such service or property.

In the instant case Ampco as agent for Petitioner will operate three parking lots at the Airport and a number of metered parking spaces near the entrances to the Airport's two terminals. Pursuant to Section 1105 of the Tax Law, the receipts derived from the providing of parking, garaging or storing of motor vehicles by persons operating a garage, parking lot or other business engaged in providing parking, garaging or storing for motor vehicles are subject to sales and use taxes. Accordingly, pursuant to Section 1116(a)(1) of the Tax Law and Town of North Hempstead v. Regan, supra, since Ampco as agent for Petitioner is a vendor of services or property of a kind ordinarily sold by private persons, Ampco as agent or Petitioner must collect and remit sales tax on the receipts received from the parking lot fees and metered parking spaces located at the Airport. The exemption from sales tax contained in Section 1299-o of the Public Authorities Law while

TSB-A-94 (18)S
Sales Tax
April 28, 1994

exempting the Petitioner from paying sales tax on its purchases of goods and services, does not exempt it or its agent from collecting and remitting sales tax on receipts received from those purchasing parking services at its facilities.

DATED: April 28, 1994

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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