

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

TSB-A-98(5)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S971103B

On November 3, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from State University of New York at Binghamton, P.O. Box 6000, Binghamton, New York 13902-6000. Petitioner provided additional information pertaining to the Petition on December 4, 1997.

The issue raised by Petitioner, State University of New York at Binghamton, is whether fees collected from students and staff for the purpose of registering their vehicles (vehicle registration fees) are subject to sales tax.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner has charged a vehicle registration fee for at least 20 years which covers the cost of documenting vehicles that may be on campus. Registrants receive a vehicle registration permit which must be permanently affixed to the vehicle. The revenue from the vehicle registration fee is placed in a separate account and is used to pay for staff to input data collected concerning the identification and owner of the vehicle. This information enables Petitioner to identify and contact the owner in the event of an emergency, such as lights being left on or leaking fluids, or to report damages. The registration fee is currently \$14 per year per vehicle registered. The registration confers no parking privileges.

Petitioner began charging a parking fee in 1990. The 1989-1990 fiscal year State Budget removed approximately \$400,000 from Petitioner's budget. Petitioner was specifically instructed by the State to recover these funds by charging a fee for parking. The parking fee is separately stated on Petitioner's invoices, and is separate from the registration fee for accounting and financial reporting purposes. Petitioner issues a university parking permit, in the form of a hang-tag, upon payment of the parking fee. Revenue from the parking fee is placed in a separate account and used to maintain the lots (paving, snow removal, security patrols) so that parking is available to persons who pay the parking fee. The parking fee is currently \$86 per year. The parking fee is not at issue in this Advisory Opinion.

Petitioner has been collecting sales tax on the vehicle registration fees and on the annual parking fees, as well as on paid parking lot and parking garage receipts, receipts from parking meters and day passes.

Applicable Law and Regulations

Section 1101(b)(3) of the Tax Law, in defining the term "receipts" for purposes of the sales tax sets forth, in pertinent part, that receipt means "...the sale price of any property and the charge for any service taxable under this article..."

Section 1105 of the Tax Law provides, in part:

Sec. 1105. Imposition of sales tax.--... there is hereby imposed and 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 provided, however, this paragraph shall not apply to such facilities owned and operated by a public corporation, as defined by section sixty-six of the general construction law, other than a public benefit corporation, as defined by such section sixty-six, created by interstate compact or at least half of whose members are appointed by the governor, or any agency or instrumentality of a municipal corporation or district corporation as defined by such section sixty-six...

Part 566 of 8 NYCRR contains the regulations of the State University at Binghamton dealing with vehicular and pedestrian traffic and parking on the Binghamton campus. Section 566.3 of these regulations provides, in part:

Campus registration of motor vehicles.

(a) No vehicle may be operated or parked on the grounds of the university without a valid State registration and without displaying a current campus vehicle registration permit, as provided in this section, and upon payment of an annual vehicle registration fee as approved by the chancellor or his designee, unless the vehicle is not subject to such regulations.

* * *

(f) Faculty and staff vehicles. Upon completion of the vehicle registration form and payment of the required fees, a vehicle registration permit is issued to faculty members and employees of the university, including but not limited to the affiliates of the Research Foundation, SUNY Foundation and those companies contracted to provide food, bookstore, vending and child care services who have fulfilled the conditions set forth in this subdivision.

(g) Student vehicles. All students are required to register motor vehicles annually with the university and must do so within the time designated for academic registration at the beginning of the fall term. Students who enter the university at the beginning of the spring or summer term must obtain a campus vehicle registration permit upon entering....

Section 566.5 of these regulations provides, in part:

Parking regulations.

(a) Vehicles may be parked on the campus only when displaying a current university parking permit, as provided in these rules and regulations and on payment of a university parking fee, approved as to amount, by the Chancellor, or a designee, unless the vehicle is not subject to such regulations and, if parked, is in a paid lot, at parking meters or in the parking garage.

* * *

(e) University parking permits must be displayed as the university indicates in vehicles parked on campus. The person to whom a parking permit is issued is responsible for any parking violations attributed to the parking permit. There is a fee for any replacement parking permit. Ownership of the parking permit is not transferable.

Opinion

The State University of New York at Binghamton is part of the State University of New York, a corporation created in the State Education Department and within the University of the State of New York, under the Board of Regents (Education Law, Section 352.1). The governing Board of Trustees is empowered to adopt and enforce campus rules relating to parking, vehicular and pedestrian traffic, and safety; including provisions for the payment of fees for the registration or parking of vehicles (Education Law, Section 360.1(c)).

As described by Petitioner, and pursuant to the above cited sections of Part 566 of 8 NYCRR, the vehicle registration fees and the parking related fees are two separate and distinct fees charged for two separate purposes, each covered by separate sections of Part 566 (Section 566.3 covers registration and Section 566.5 covers parking). The registration fees and parking fees are separately stated on Petitioner's invoices, and Petitioner issues separate registration and parking permits. The registration confers no parking privileges.

Also, according to Petitioner, the registration fees and the parking fees are two separate items for accounting and reporting purposes. The revenue generated by the registration fees goes to a separate account and is applied to

the cost of paying staff who input data collected concerning the identification and owner of the vehicle. The revenue generated by the parking fees also goes to a separate account and is applied to costs directly related to the operation of and maintenance of the parking areas (paving, snow removal and security).

Since the service of registering a motor vehicle is not specifically enumerated in Section 1105(c) of the Tax Law, the vehicle registration fees could only be found to be subject to sales tax if they are considered to be receipts attributable to providing parking, garaging or storing of motor vehicles which are taxable pursuant to Section 1105(c)(6) of such law.

In describing the purpose of the general requirement of the State for all motor vehicles to be registered, New York Jurisprudence 2d (8 NY Jur 2d, Automobiles, §24, p. 82) states: "The underlying purpose of these provisions is to establish a uniform system of operation and use of motor vehicles, which will supervise vehicles, their movement and control, their identity in relation to the public, and any resultant damage or injury they may occasion." The purpose of Petitioner's registration requirement as it applies to the confines of the campus of Petitioner, is similar to the purpose of the statewide registration requirement stated above. Petitioner's registration requirements are separately authorized powers granted by the Legislature and, therefore, may properly be distinguished from its parking requirements.

Accordingly, the vehicle registration fees described above are not considered receipts from parking, garaging or storing of motor vehicles and therefore are not subject to sales tax as it is imposed by Section 1105(c)(6) of the Tax Law.

DATED: February 2, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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