

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

TSB-A-85(21)S
Sales Tax
June 12, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830318A

On March 18, 1983, a Petition for Advisory Opinion was received from Northtown Inc., 3097 Sheridan Drive, Amherst, New York 14226.

Petitioner raises the issue of whether supplemental charges imposed upon Petitioner's tenants in the form of additional rents pursuant to the terms of a lease agreement are subject to New York State and local sales taxes where such charges represent the costs associated with maintaining the common areas of a shopping plaza owned by Petitioner.

Petitioner owns land and buildings which are used as a shopping plaza. Petitioner leases store spaces within the plaza to various business establishments. The common areas of the plaza, including parking lots, driveways and sidewalks, are not leased or rented to Petitioner's tenants or others. Pursuant to its leases with tenants, Petitioner is responsible for the maintenance and repair of common areas. Petitioner uses its own employees to provide these services, but is not in the business of providing such services for others. In addition to the maintenance and repair expenses incident to the upkeep of the common area, maintaining the common area also entails the costs of lighting, snow removal, police supervision, real estate taxes, water and sewer charges and insurance. Petitioner distributes the various costs and expenses that derive from the common area on a pro rata basis among its tenants.

On May 7, 1984 the Department of Taxation and Finance issued a memorandum setting forth its policy pertaining to charges by mall operators made to tenants for maintenance of the common areas. Such memorandum states in pertinent part as follows:

"Common area charges which are designated as 'additional rent' or similarly provided for by specific provisions in the lease agreement are considered to be receipts from the rental of real property and are not subject to sales tax when billed to tenants." (TSB-M-84(9)S).

Accordingly, Petitioner's charges made to tenants in the form of additional rents for maintenance of the common areas are not subject to tax.

DATED: May, 23, 1985

FRANK J. PUCCIA
Director
Technical Services Bureau

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