

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

TSB-A-85(37)S
Sales Tax
August 28, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S841203A

On December 3, 1984 a Petition for Advisory Opinion was received from WHK Restaurant Corporation, 1013 Second Ave., New York, N.Y. 10022.

The issue raised is whether fees charged for the personal services of hostesses by an establishment which also sells alcoholic and non-alcoholic beverages are subject to the sales tax.

Petitioner employs several hostesses for the purpose of providing patrons with conversation and companionship on a personal and individual basis. For these services, Petitioner charges its customers a personal service fee based on length of stay, number of hostesses attending, and number of persons attended.

Petitioner states that, on the average, personal service fees account for over 60% of its revenue while less than 40% derives from the sale of beverages. Each charge is stated separately on the customer's bill. Petitioner does not stage performances for profit nor charge any admission or membership fees. Only complimentary food is served on the premises.

Section 1105(d)(i) of the Tax Law imposes a tax on "The receipts from every sale of beer, wine or other alcoholic beverages or any drink of any nature, or from every sale of food and drink of any nature, . . . when sold in or by restaurants, taverns or other establishments in this state, . . . including . . . any cover, minimum, entertainment or other charge made to patrons or customers. . . (1) in all instances where the sale is for consumption on the premises where sold; . . ."

The business conducted by Petitioner conforms to the classification of a "restaurant, tavern or other establishment" making sales of food and drink to customers. Receipts attributable to the services of the hostesses, as described by Petitioner, are deemed charges for "entertainment", a term defined in Webster's New International Dictionary of the English Language, 2nd Ed., as: "The act of receiving as a host "and" that which . . . amuses or diverts, whether in private, as by conversation, . . . or in public".

Therefore, the personal service fees patrons are required to pay represent "entertainment or other" charges within the meaning and intent of the Tax Law, which are includable in Petitioner's taxable business receipts. The relative proportion of amounts derived from personal services to other business receipts has no bearing on the tax consequences.

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Accordingly, both the receipts from refreshments and from personal service fees are subject to the tax imposed by Tax Law 1105(d)(i).

DATED: August 12, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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