

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

TSB-A-91 (59)S
Sales Tax
August 20, 1991

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S910620A

On June 20, 1991, a Petition for Advisory Opinion was received from MHC Airport Inn Inc./Rochester Holiday Inn, 8401 Connecticut Avenue, Chevy Chase, Maryland 20815.

The issue raised by Petitioner, MHC Airport Inn Inc./Rochester Holiday Inn, is whether the full amount of a banquet gratuity is subject to sales tax when the entire gratuity is not passed on to the banquet employees.

Petitioner has a stated policy whereby a 16% banquet gratuity is charged to its guests. The banquet gratuity is apportioned in a consistent and stated manner with 4.5% being retained by the Petitioner and 11.5% being paid over to banquet employees.

Section 527.8(1) of the Sales and Use Tax Regulations states as follows:

(1) Gratuities and services charges. Any charge, made to a customer, is taxable as a receipt from the sale of food and drink unless:

- (i) the charge is separately stated on the bill or invoice given to the customer; and
- (ii) the charge is specifically designated as a gratuity, and
- (iii) all such monies received are paid over in total to employees. (emphasis added)

In Park Country Club of Buffalo, Inc., Adv Op St Tx Comm. August 12, 1985, TSB-A-85(38)S, the State Tax Commission advised that gratuities received by a Petitioner did not satisfy the criteria for exemption from sales tax stated in Section 527.8(1) of the Sales and Use Tax Regulations even though charges were separately stated on the bill and specifically designated as a gratuity, since the entire gratuity received by Petitioner was not paid over in total to its employees.

Accordingly, pursuant to Section 527.8(1) of the Sales and Use Tax Regulations and TSB-A-85(38)S since Petitioner does not pay over in total to its banquet employees all monies received as gratuities, the receipts received by Petitioner for such charges are subject to sales tax.

DATED: August 20, 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.