

**New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division**

TSB-A-05(18)S
Sales Tax
May 26, 2005

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S040608A

On June 8, 2004, the Department of Taxation and Finance received a Petition for Advisory Opinion from William H. Jones, 4923 Pelleport Ave., Orlando FL 32812.

The issue raised by Petitioner, William H. Jones, is whether Petitioner's charges to its patrons at a carnival for playing a game with a chance to win a prize are subject to sales tax.

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

Petitioner operates games at carnivals in New York State. Petitioner's patrons pay to play a particular game with a chance to win a prize. Petitioner does not sell merchandise.

Applicable law and regulations

Section 1101(d)(2) of the Tax Law defines admission charge as "The amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor."

Section 1101(d)(10) of the Tax Law defines place of amusement as "Any place where any facilities for entertainment, amusement, or sports are provided."

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax . . . upon:

* * *

(f)(1) Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state . . . except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools. . . .

Opinion

Petitioner operates games at carnivals in New York State. Petitioner charges its patrons to play in a game with a chance to win a prize. Pursuant to section 1105(f)(1) of the Tax Law, admission charges to, or for the use of, any place of amusement in the State are subject to sales tax, with the exception of charges to a patron for the use of facilities for sporting activities in

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which such patron is to be a participant. The court in *Outdoor Amusement Business Assn. v State Tax Commn.*, 57 NY2d 790[1982], rev'g on dissenting mem below, 84 AD2d 950 (4th Dept 1981), examined whether games, similar to those of Petitioner, are a place of amusement within the meaning of the statute. As determined in *Outdoor Amusement Business Assn. v State Tax Commn.*, *supra*, the fee is paid by the patron to participate in games with the hope of winning a prize. Since no charge is made for entering the tents or places where the games are played, the fee is not an admission to or for the use of a place of amusement. Therefore, the amounts charged by Petitioner to play the games are not for admission to or for the use of a place of amusement and are not subject to sales tax.

DATED: May 26, 2005

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

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