

**New York State Department of Taxation and Finance  
Office of Counsel  
Advisory Opinion Unit**

TSB-A-14(26)S  
Sales Tax  
July 28, 2014

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S121031A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its fee charged to a customer to use a golf simulator game is subject to State or local sales and compensating use tax. We conclude that Petitioner's fee to use its golf simulator game is not subject to State or local sales or use tax.

**Facts**

Petitioner is the owner and operator of a golf simulator business. The golf simulator facility has four golf simulators, a bar, and limited food service. The golf simulators are each run by a separate computer, and each has an 11 foot tall, 17 ½ foot wide, 25 foot deep screen into which a golfer hits the ball. After the ball is hit into the screen, the computer program simulates the related attributes of that particular golf shot, including distance and accuracy. The simulator screen depicts the golf course being played on (of the many courses to choose from), and shows tee boxes, fairways, greens, and bunkers. Petitioner charges a flat fee to use a simulator. Use of the simulator is open to the public. Customers may use their own golf clubs for simulator play. Petitioner also offers the use of golf clubs and balls at no charge for golfers who do not have their own.

**Analysis**

Section 1105(f)(1) of the Tax Law imposes sales tax on any admission charge to or for the use of any place of amusement in the State. Section 1101(d)(2) of the Tax Law defines admission charge as “[t]he 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 “[a]ny place where any facilities for entertainment, amusement, or sports are provided.” Petitioner's flat charge is for the use of its golf simulator, not for admission to the place where the golf simulators are located. Thus, this charge is not an admission charge, and it is not subject to tax under Tax Law § 1105(f)(1). Rather, the flat charge is for the use of the golf simulator. The charge for the use of such a device is not subject to tax. See *Fairland Amusements v State*

*Tax Commn.*, 110 AD2d 952 (3d Dep't), *rev'd* 66 NY2d 932 (1985); *Bathrick Enterprises v Murphy*, 27 AD2d 215 (3d Dep't 1967), *aff'd* 23 NY2d 664 (1968). Accordingly, Petitioner's fee for use of the simulator is not taxable.

DATED: July 28, 2014

/S/  
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DEBORAH R. LIEBMAN  
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.