

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

TSB-A-97(7)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960626B

On June 26, 1996, the Department of Taxation and Finance received a Petition for Advisory Opinion from Five Star Promotions, PO Box 17187, Rochester, New York 14617.

The issues raised by Petitioner, Five Star Promotions, are:

1. Whether the admission fee charged by Petitioner for admission to a sports card and memorabilia show is subject to sales tax.
2. Whether the fee charged to vendors for table space to display their sports cards and memorabilia is subject to sales and compensating use taxes.
3. Whether sales of autographed products to show patrons attending the sports card and memorabilia shows are subject to sales and compensating use taxes.
4. Whether sales of autographs only at the sports card and memorabilia shows are subject to compensating sales and use taxes.

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

Petitioner is a sports card and memorabilia show promoter. Each show generally runs two days. Petitioner rents meeting rooms at a local hotel or convention center to hold the sports card and memorabilia show. Petitioner will then charge a fee to show vendors which allows them to sell sports cards and memorabilia during the show. Petitioner supplies a table for the show vendor to display items, but no fee is charged specifically for the table. The vendor may bring his or her own tables or displays.

Petitioner also pays a fee to a professional athlete which requires him or her to attend the show for a specific time period and sign a specific number of autographs. The athlete will sign items provided by Petitioner, such as photographs, baseballs, helmets, etc. Petitioner then sells these autographed items to the show patrons. In addition, the athlete will sign items brought to the show and owned by the show patrons, such as blank paper, photos, baseballs, etc. Petitioner charges a fee to patrons for the autographs.

Section 1101(b)(4) of the Tax Law defines the term "retail sale", in part, to mean "(i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property . . ."

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."

Section 1105 of the Tax Law imposes sales tax upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(2) Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which such services are performed.

Section 1105(f)(1) of the Tax Law imposes sales tax, in part, on:

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 for admission to race tracks, boxing, sparring or wrestling matches or exhibitions which charges are taxed under any other law of this state, or dramatic or musical arts performances, or motion picture theatres, and 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 . . .

Section 1131 of the Tax Law provides, in part:

(1) "Person required to collect tax" or "person required to collect any tax imposed by this article" shall include: every vendor of tangible personal property or services; every recipient of amusement charges; and every operator of a hotel . . .

* * *

(4) "Property and services the use of which is subject to tax" shall include: (a) all property sold to a person within the state, whether or not the sale is made within the state, the use of which property is subject to tax under section eleven hundred ten or will become subject to tax when such property is received by or comes into the possession or control of such person within the state; . . .

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With respect to issue "1", Petitioner's sports card and memorabilia shows are not places of amusement for purposes of Section 1105(f)(1) of the Tax Law. (See Antique World, Tax App Trib, February 22, 1996, TSB-D-96(13)S). Therefore, the admission fee charged by Petitioner is not subject to sales tax under Section 1105(f)(1).

Concerning issue "2", a fee charged to a vendor to use space to display tangible personal property for sale is a fee for the use of real property and is, therefore, not subject to sales and use taxes.

As for issue "3", Section 1105(a) of the Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property. Accordingly, Petitioner would be required to collect sales tax on any autographed products it sells to show patrons.

With respect to issue "4", the fee charged for autographing items like blank paper, photos, baseballs, etc. which are owned and brought to the show by the show patrons is not a fee for an enumerated service under Section 1105(c) of the Tax Law and therefore is not subject to sales tax.

It is noted that since Petitioner is making taxable sales of tangible personal property, Petitioner must register as a person required to collect tax under Section 1134 of the Tax Law.

DATED: February 6, 1997

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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