

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

TSB-A-97(61)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S970708A

On July 8, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Playspace 92nd Street West, Inc., 2473 Broadway, New York, NY 10025.

The issue raised by Petitioner, Playspace 92nd Street West, Inc., is whether the amusements it provides qualify as sporting activities in which its customers participate, thus excluding the admission charge for such activities from sales tax under section 1105(f)(1) of the Tax Law.

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

Petitioner owns and operates a play center and indoor playground for children ages one to six years old. An admission fee is charged for each child who enters. Parents are admitted free of charge. A single fee is paid upon entry, and the child may spend from one to three hours at the center.

The child can play with games, toys, computers and other amusement devices. Alternatively, the child can play in a sand box, on swings, etc., similar to an outdoor playground. The child participates in whatever activity he or she chooses, which can include free play or structured activities such as arts and crafts, sing alongs, story times, circles games, etc.

Applicable Law and Regulations

Section 1105(f) of the Tax Law imposes tax on:

(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. . . .

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 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."

Technical Services Bureau Memorandum, TSB-M-87(15)S, dated November 13, 1987, entitled Taxable Status of Amusement Rides and Admission Charges provides, in part:

. . . While sales tax is not applicable to charges for the use of amusement rides, charges for admission to an amusement park or similar site where such rides are located remain subject to tax. (Emphasis added)

Opinion

A place of amusement may be interpreted as meaning the physical space within which the amusement is provided. The definition of a place of amusement contained in Tax Law Section 1101(d)(10) is descriptive of Petitioner's play center, i.e., a site where facilities for amusement or entertainment are provided (cf. Fairland Amusements v. State Tax Commn., 110 AD2d 952, 954 (Mikoll, J., dissenting), revd 66 NY2d 932.)

Petitioner charges one fee for general admission to its place of amusement, which entitles the customer to enter the center and enjoy unlimited use of various amusement devices and attractions for a specified period of time. This fee can be characterized as a charge for the use of the facilities, i.e., the momentary use of the amusement devices and playground equipment, and for entrance to a place where entertainment, i.e., sing alongs, circles games, and story times, is to be conducted. Accordingly, the fee Petitioner charges its customers is an admission charge as defined in section 1101(d)(2) of the Tax Law (cf. Outdoor Amusement Business Assn. v. State Tax Commn., 84 AD2d 950, revd on dissenting mem below 57 NY2d 790; Fairland Amusements, Inc., supra).

Petitioner contends that such an admission charge should not be taxable under Section 1105(f)(1) of the Tax Law because of that provision's exclusion of charges for participant sports activities. The attractions, however, are more in the nature of non-ride attractions which are comparable to those found in an amusement park than sporting activities contemplated by the statute. Admission charges to amusement parks are taxable under Section 1105(f)(1) of the Tax Law (see Darien Lake Fun Country v. State Tax Commn., 118 AD2d 945, affd 68 NY2d 630; TSB-M-87(15)S, supra). Accordingly, the exclusion from sales tax on admissions as provided for in Section 1105(f)(1) is not applicable to Petitioner's business operation. Such admission charges are thus subject to tax.

DATED: September 29, 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.