

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

TSB-A-98(52)
Sales Tax
August 4, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S971231D

On December 31, 1997, the Department of Taxation and Finance received a Petition for Advisory Opinion from Tumbles Fresh Meadows Entertainment, Inc., 183-07 Horace Harding Expressway, Fresh Meadows, NY 11365-2243.

The issue raised by Petitioner, Tumbles Fresh Meadows Entertainment, Inc., is whether the fees charged for the admission to its play center are subject to sales tax.

Petitioner is a corporation that maintains and operates a play center equipped with non-moving attractions for recreation by children, e.g., climbing apparatus. A single admission fee is charged to enter the play center.

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) (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."

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 as defined in Section 1101(d) (10) of the Tax Law may be interpreted as meaning the physical space within which the amusement is provided. This definition 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.)

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The sales tax is imposed on the admission charge to or for the use of any place of amusement. The fee charged to enter a location where amusement facilities are found or for the use of the facilities 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). Petitioner's entrance fee for the admission to its place of amusement, which entitles the customer to enter the center and enjoy unlimited use of various amusement devices, is an admission charge within the meaning of Section 1101(d)(2) of the Tax Law. Accordingly, the receipts from such charges are subject to tax under Section 1105(f)(1) of the Tax Law (Playspace 92nd Street West, Inc., Adv Op Comm T&F, September 29, 1997, TSB-A-97(61)S).

It should be noted that Petitioner's play center is not comparable to the type of facility for participatory sports contemplated by the statute for which admission charges are excluded from tax (Playspace 92nd Street West, Inc., supra).

DATED: August 4, 1998

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

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