

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

TSB-A-00(44)S
Sales Tax
October 18, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S000414A

On April 14, 2000, the Department of Taxation and Finance received a Petition for Advisory Opinion from Marcum & Kliegman, LLP, 130 Crossways Park Drive, Woodbury, NY 11797.

The issue raised by Petitioner, Marcum & Kliegman, is whether receipts from its client's sales of "bowling parties" that include both the cost of the bowling lane rentals and the cost of food and/or beverages are subject to sales and compensating use taxes.

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

Petitioner's client operates a 42-lane bowling alley and derives its revenues from bowling and several bowling related activities as described below.

Petitioner's client receives approximately 30% of its revenue from what is called "open bowling." Open bowling is available anytime the bowling alley is open; patrons may walk in and pay for each game of bowling. The charge for one ten-frame game of bowling is based upon the time of the day and the day of the week. For example, a game of bowling is more expensive on Friday night than it is on Tuesday afternoon. The average charge for one ten-frame game of bowling is approximately \$6.45. An additional equal charge is incurred for additional games bowled.

Petitioner's client receives approximately 4% of its revenue from "shoe rental." This is a charge to rent a pair of bowling shoes during open bowling. Petitioner's client charges \$3.00 for shoe rental, regardless of the time, day or number of games bowled.

As is common with most bowling alleys, Petitioner's client's bowling alley has a bar and a snack bar on the premises. The bar is somewhat larger than the typical bowling alley bar and the snack bar serves somewhat fancier food than the typical bowling alley snack bar. The bar and the snack bar do not have a separately enclosed eating and drinking area. The bar and the snack bar do have a glass partition separating them from the bowling lanes. In addition, there are tables and counter space for patrons to sit at while they eat or drink. There is no access to the bar or the snack bar except through the bowling alley. The bar serves both alcoholic and non-alcoholic beverages. The snack bar serves food normally expected to be found at a bowling alley such as hamburgers, hot dogs, and pizza, as well as "higher-end" food such as pasta, hot appetizers and sandwiches. Petitioner's client does not serve "sit down" meals, as restaurants do.

Any time the bowling alley is open to the public, all patrons have complete access to the bar and snack bar to order something to eat or drink. All food and beverage items have a per item

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charge. For example, a hamburger or sandwich may cost \$6.00, french fries \$3.00, a soda \$2.50 or a beer \$5.00 (prices are approximates). Bar receipts from open bowl patrons account for 18% of revenues. Snack bar receipts from open bowl patrons account for 4% of revenues. All gratuities received in connection with the sale of food and beverages are turned over to the food servers and bartenders. The bar and snack bar are closed when the bowling alley is closed.

Petitioner's client receives approximately 5% of its revenue from other miscellaneous sources such as vending machine sales and sales of clothing (bowling shirts, etc.), bowling equipment, trophies and other items.

Petitioner's client receives approximately 1% of its revenue from "childrens' parties." A child's party includes pizza, soda, ice cream cake, two games of bowling and shoe rental for a per child charge. This charge is approximately \$28.

The remaining 38% of Petitioner's client's revenue is from "bowling parties." It is the sales tax implications on these charges that are at issue in this Advisory Opinion. Revenues from bowling parties come from three sources. These three components are separately stated in the contract for a bowling party, a sample of which was submitted with this Petition.

The first component of a bowling party is the lane rental. The lane rental charge varies from \$125 to \$190 per lane and entitles the bowling party customer to use of the lane for three hours by a maximum of seven bowlers. Petitioner's client requires that a bowling party customer rent at least one lane per seven bowlers. There is no limit to the number of games that can be bowled in the three-hour period.

In addition to the lane rental, the bowling party customer has the option to order food for the party guests. The purchase of food is not required as a condition of the lane rental. The bowling party customer chooses from the various food choices on the menu and Petitioner's client charges the per item charge multiplied by the number of persons in the party. For example, a bowling party customer could choose to have chicken fingers and fried shrimp appetizers available for its guests. If chicken fingers are \$5.00 a serving and fried shrimp is \$7.00 a serving, the bowling party customer would be charged \$12.00 per person for food. This charge is in addition to (and separately stated from) the lane rental charge.

During the party, chaffing dishes are set up behind the lanes where the party guests are bowling so that they can eat at their leisure. Normally, bowling parties are not segregated from the rest of the bowling alley, nor is there a separate section of the bowling alley for bowling parties.

Also, in addition to the lane rental, the bowling party customer has the option of ordering beverages for the party guests. The ordering of food without beverages or ordering of beverages

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without food is allowed. Again, ordering beverages is not a requirement of the lane rental. The bowling party customer has two choices when ordering beverages for its guests.

The bowling party customer may purchase “open bar” privileges for its guests. In this situation, the bowling party customer is charged a certain fee (approximately \$35 per person) which entitles the guests to unlimited drinks for the three hours Petitioner’s client has reserved the lane for the party. The actual fee charged depends on whether the bowling party customer is purchasing unlimited alcoholic beverages, nonalcoholic beverages, beer or wine.

The other beverage option a bowling party customer has is to purchase a certain number of drink tickets. These tickets are exchanged by the guests for drinks (one ticket equals one drink). The bowling party customer may purchase as many or as few tickets as it chooses. The cost of the ticket is dependent upon whether it can be exchanged for an alcoholic or nonalcoholic drink. These drink tickets usually cost approximately \$5.00.

As shown in the sample contract provided, all charges for the lane rental, food, beverages, gratuity and sales tax are separately stated. Charges for the lane rental, food and beverages contain a similar profit margin. Petitioner’s client charges and remits sales tax on all charges for food and beverages purchased during parties. The customers are required to pay an 18% gratuity on all food and drink charges. All gratuities received in connection with the sale of food and beverages are turned over to the food servers and bartenders. Accordingly, sales tax is not charged on gratuities.

Guests attending the bowling parties have the option of purchasing additional food or drinks on their own simply by walking over to the bar or snack bar and ordering the food or beverage and paying for it. Petitioner’s client remains open for “open bowling” during a bowling party. There may be several parties going on at the same time and there is no requirement to start any of these parties at a certain time, although the party must end by the time the bowling alley closes. In rare cases, very large parties reserve all 42 lanes. In those cases, the bowling alley is not available for open bowling because there are no lanes available. However, it is also possible that there would be no lanes available because open bowlers occupy all the lanes.

Of the 38% of the bowling alley’s receipts that are attributable to bowling parties, 4% of the revenue is from food, 8% is from beverages and the remaining 26% is from the lane rental charge.

Applicable Law and Regulations

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(d)(i) of the Tax Law imposes sales tax on:

The receipts from every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers (except those receipts taxed pursuant to subdivision (f) of this section). . . .

Section 1105(f)(1) of the Tax Law imposes sales tax 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 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 527.1(b) of the Sales and Use Tax Regulations provides:

Taxable and exempt items sold as a single unit. When tangible personal property, composed of taxable and exempt items is sold as a single unit, the tax shall be collected on the total price.

Example: A vendor sells a package containing assorted cheeses, a cheese board and a knife for \$15. He is required to collect tax on \$15.

Section 527.10 of the Sales and Use Tax Regulations provides, in part:

(a) *Imposition.* (1) A tax is imposed upon any admission charge, in excess of 10 cents, to or for the use of any place of amusement in this State.

* * *

(b) *Definitions.* (1) Admission charge.

(i) The amount paid for admissions . . . to any place of amusement, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor.

* * *

(3) Place of amusement. Any place where facilities for entertainment, amusement, or sports are provided. Such places include without limitation . . . bowling alley. . . .

(d) *Admissions excluded from tax.* . . .

* * *

(4) Charges to a patron to or for the use of sporting facilities or activities in which the patron is to be a participant are excluded from tax.

Example 6: Admission charges for the use of bowling lanes . . . are not subject to tax. However, any charge for the use of tangible personal property in conjunction with the sporting activity is taxable. . . .

Opinion

Petitioner's client operates a 42-lane bowling alley and derives its revenues from bowling and several bowling related activities. At issue in this Advisory Opinion is the application of the Sales and Use Tax Law to a single aspect of Petitioner's client's business known as "bowling parties." A bowling party consists of the use of bowling lanes by a maximum of seven bowlers per lane for a 3-hour period, during which time an unlimited number of games can be bowled. For additional optional charges, bowling party customers may purchase food and/or beverages (alcoholic and non-alcoholic) for their party guests to eat and drink while bowling. These additional charges are separately stated in the sample contract provided as part of this Petition.

Petitioner's client's bowling alley is a "place of amusement" and its charge for the use of a bowling lane is an "admission charge" within the contemplation of Section 1105(f)(1) of the Tax Law. Under Section 1105(f)(1), charges for admission to a participatory sporting activity are specifically excluded from the imposition of sales tax. The exclusion from tax explicitly refers to bowling as the kind of activity intended to be excluded under the statute. Therefore, the charges for bowling lane rental are not subject to sales tax. However, when sold in conjunction with the sale of taxable food and drink, the issue arises whether the non-taxable nature of the bowling charges is affected by the other taxable components of the sale.

In addition to the lane rental charge, a bowling party customer has the option of ordering food and/or beverages for its guests. Such sales of food and drink fall within the purview of Section 1105(d) of the Tax Law and are subject to the imposition of sales tax. The food and drink supplied

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at bowling parties is an extension of Petitioner's client's normal restaurant and bar business located at the bowling facility. The purchase of such food and drink by a bowling party customer is separate from the bowling the same way it is anytime that any bowling customer purchases food or drink from the snack bar or bar. As described above, the purchase of food or drink is not required as a condition of the lane rental.

Accordingly, the bowling component of Petitioner's client's bowling parties is a distinct, discrete activity separate from the sales of food and drink. The two transactions are sufficiently distinguishable to allow differential tax treatment. Therefore, provided the lane rental charges are reasonable and separately stated from the charges for food and drink and any other taxable charges, only the charges for food and drink and any other taxable charges are subject to sales tax (see Paul J. Carucci, Adv Op Comm T&F, October 24, 1990, TSB-A-90(54)S). Likewise, charges specifically designated as gratuities that are separately stated from the charges for food and drink and are paid over in total to the workers providing the food and drink service are not subject to tax. See Section 527.8(1) of the Sales and Use Tax Regulations.

DATED: October 18, 2000

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