

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-07(22)S
Sales Tax
August 27, 2007

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S070517A

On May 17, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from Adirondack Extreme Adventure Course, LLC, 347 Cleverdale Road, Cleverdale, NY 12820.

The issue raised by Petitioner, Adirondack Extreme Adventure Course, LLC, is whether the receipts from Petitioner's charge for use of its tree link adventure course are subject to sales tax.

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

Petitioner operates what it describes as a "tree link adventure course." Petitioner's admission fee allows its customers to use a variety of high-wire courses, which vary in degree of difficulty. No fee is charged by Petitioner to enter its premises; rather a fee is charged to use its high-wire courses. Use of these courses involves substantial physical activity by the customers. Petitioner's sales brochure provides the following information:

Adirondack Extreme Adventure Course, LLC is a high-wire adventure course set in the height of the forest. Explore nature through a combination of outrageous obstacles and challenges with zip lines, suspended rope bridges, swings, slides, nets and ladders. Spend an action packed 2.5 to 3 hours trekking from tree to tree. Our 5 thrilling courses offer 79 games from kids to adults, and our 2 spectacular giant Tyrolean zip lines provide adrenalin fueled fun. Take a journey and explore the outdoors like you never have before.

Adirondack Extreme is great fun for the entire family and the perfect venue for group events such as parties, school field trips, summer camp outings, church and youth groups, and corporate events.

Our TreeGO aerial obstacle course is set in several acres of forest and is suspended between the trees at 10 to 50 feet above the ground! TreeGO offers the best equipment in its class and sets the standard for quality aerial adventure products and customer experience.

Each participant is given a safety demonstration by trained instructors before beginning the course. We want all of our visitors to have the most enjoyable experience imaginable, and that means providing you with the security of expertly engineered structures, quality materials and construction by TreeGO, along with continuous inspections of our equipment and our trees. Safety is our first priority.

Applicable law and regulations

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax. On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax . . . upon:

* * *

(f) (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 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 live circus performances, or motion picture theaters, 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 527.10(b)(1)(ii) of the Sales Tax Regulations provides, in part:

Taxable charges for entertainment or amusement include admissions to sporting events such as baseball or football games, stock car racing, and college athletic events, carnivals, rodeos, circuses and exhibitions.

Section 527.10(d) of the Sales Tax Regulations provides, in part:

(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 and swimming pools are not subject to tax. However, any charge for the use of tangible personal property in conjunction with the sporting activity is taxable. Included as taxable would be bowling shoes, towel and locker rentals.

Example 7: A ski resort's charge for lift tickets is an exempt admission charge to a sporting facility in which the patron will be a participant. If the facility charges for the use of skis or other equipment, such charge is for the rental of tangible personal property which is subject to tax.

Opinion

Petitioner operates a facility where its customers go from tree to tree and negotiate various obstacles using zip lines, suspended rope bridges, swings, slides, nets and ladders. Petitioner's various high-wire courses vary in degree of difficulty, and use of these courses

involves substantial physical activity by the customers. Therefore, Petitioner's charges for use of its tree link adventure course are charges for the use of a sporting facility where the customer is a participant, and such charges are excluded from sales tax, as described in section 1105(f)(1) of the Tax Law.

This Opinion only addresses Petitioner's charge for the use of its tree link adventure course and does not address any other fees that Petitioner may charge its customers.

DATED: August 27, 2007

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Taxpayer Guidance Division

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.