

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

TSB-A-07(5)S
Sales Tax
February 8, 2007

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S061017C

On October 17, 2006, the Department of Taxation and Finance received a Petition for Advisory Opinion from Strates Shows, Inc., P. O. Box 174, Orlando, Florida 32802.

The issue raised by Petitioner, Strates Shows, Inc., is whether admissions to certain funhouse amusements are subject to sales tax.

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

Petitioner is a Delaware corporation in the business of providing amusement rides, food, and novelty concessions at state and county fairs primarily in the eastern half of the United States. Each year during the month of August, the Erie County Agricultural Society, Inc. (ECAS) operates an agricultural fair (the Fair) that attracts approximately 1 million visitors over a 12-day period to the fairgrounds in Hamburg, New York.

For the past several years, Petitioner has been granted the exclusive right by ECAS to operate amusement rides at the Fair. For the 2006 Fair, Petitioner operated a total of 64 amusement rides, such as Ferris wheels, merry-go-rounds, and the like. A number of the amusement rides are owned by independent contractors that have entered into operating agreements with Petitioner.

Patrons are only allowed entry to the Fair by purchasing an admission ticket. Adult gate admission for the 2006 Fair was \$9.00. Pre-sale tickets were offered for sale at designated locations for \$7.00. The admission price paid to enter the Fair did not include the right to use any of Petitioner's amusement rides. In order to use any of the amusement rides, the patron was required to purchase ride tickets in addition to and separately from the admission price paid to enter the fairgrounds. Entry onto an amusement ride required 2 to 5 tickets, depending on the ride. Petitioner also offered a "pay-one-price" promotion which gave patrons the right to full-day access to the rides for \$20.00 (\$17.00 with a coupon) in addition to and separate from the admission price paid to enter the Fair.

The ride tickets were used to admit patrons to four funhouse amusements, Monkey Maze Funhouse, Persian Camel Funhouse, King's Circus Funhouse, and Mario Land Funhouse, in addition to Petitioner's other amusement rides.

Each funhouse is a portable structure built on a semi-trailer platform that erects into a funhouse facility. With the exception of the Monkey Maze Funhouse, the patron makes his or her way through a fixed route with the assistance of motorized devices (i.e., mechanical floor plates and conveyor belts). In the Monkey Maze Funhouse, the participant follows a fixed route

of distorted mirrors that ends with the person exiting by means of a spiral slide. Petitioner's funhouses are monitored by operators to ensure that a patron is being conveyed and directed over a fixed route in an expeditious manner. Once a patron enters a funhouse, he or she is kept moving with the assistance of motorized or gravity-assisted devices. Patrons may not remain in the funhouses for an unlimited amount of time.

Applicable law

Section 1101(d) of the Tax Law provides, in part:

When used in this article for purposes of the tax imposed under subdivision (f) of section eleven hundred five, the following terms shall mean:

* * *

(2) Admission charge. The amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor.

* * *

(9) Patron. Any person who pays an amusement charge or who is otherwise required to pay the tax imposed under such subdivision (f) of section eleven hundred five.

(10) Place of amusement. Any place where any facilities for entertainment, amusement, or sports are provided.

Section 1105(f)(1) of the Tax Law imposes a sales tax on admission charges and provides, in part, as follows:

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. . . .

Opinion

Petitioner provides amusement rides, food, and novelty concessions at state and county fairs. In 2006, Petitioner operated a total of 64 amusement rides at the Erie County Fair. Patrons of the Fair paid an admission charge to enter the fairgrounds, and, once admitted, could purchase

tickets to allow the patron to use Petitioner's various amusement rides and devices. Among the various amusement rides and devices that patrons could use by purchasing these tickets were four funhouse amusements: Monkey Maze Funhouse; Persian Camel Funhouse; King's Circus Funhouse; and Mario Land Funhouse. Petitioner's funhouses are monitored by operators to ensure that a patron is being conveyed and directed over a fixed route in an expeditious manner. Once a patron enters the funhouse, he or she is kept moving through it by motorized or gravity-assisted devices. Patrons may not remain in the funhouses for an unlimited amount of time.

Section 1105(f)(1) of the Tax Law imposes sales tax on admission charges to or for the use of any place of amusement in New York State. The term *place of amusement* has been interpreted by the courts as meaning the physical space within which the amusement is provided. Accordingly, the definition of a place of amusement in section 1101(d)(10) of the Tax Law, i.e., "Any place where any facilities for entertainment, amusement, or sports are provided," does not include amusement rides. See *Fairland Amusements v State Tax Commn.*, 110 AD2d 952, 954 (Mikoll, J., dissenting), revd 66 NY2d 932. Petitioner's funhouses are amusement devices or facilities similar to amusement rides rather than places of amusement. See *Bathrick Enterprises v Murphy*, 27 AD 2d 215, affd 23 NY 2d 664; *Fairland Amusements v State Tax Commn.*, *supra*. Thus, the purchase price of tickets for admission to the funhouses is not an admission charge to a place of amusement but a charge for the use of portable amusement rides. Therefore, Petitioner's sales of tickets for the use of the funhouses described in this Opinion are not subject to the sales tax imposed under section 1105(f)(1). See *Meltzer, Lippe, Wolfe, Schlissel & Sazer, P.C.*, Adv Op Comm T & F, June 8, 1994, TSB-A-94-(24)S.

DATED: February 8, 2007

/s/
Jonathan Pessen
Tax Regulation Specialist IV
Technical Services Division

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