

New York State Department of Taxation and Finance  
**Office of Counsel**  
**Advisory Opinion Unit**

TSB-A-10(11)S  
Sales Tax  
March 26, 2010

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S091207B

On December 7, 2009, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its admission charges are subject to sales tax. Petitioner charges admission to places of amusement. These charges are subject to sales tax.

**Facts**

Petitioner operates on a seasonal basis a group of haunted houses that patrons pay admission to enter. The attractions are located in a central location in the [REDACTED] area. Patrons can pay admission on-site or at outlets in the [REDACTED] area. The main building containing the haunted house has an entertainment area, which patrons can enter for free. A video screen in this area displays trailers and clips of scary movies. Another video screen displays music videos, interviews with patrons, and a clip from the Travel Channel reviewing the haunted house. Music is played in the entertainment area; a DJ is on hand during periods of high attendance. Costumed performers entertain patrons in this area. Petitioner operates a snack counter in this area that sells soft drinks and snacks.

The haunted houses are 60-80 feet wide and 40-48 feet deep (approximately 4800 square feet). No live performers work in the haunted houses. The haunted houses are registered with New York State as amusement rides. Patrons can stay in haunted houses as long as they want. The admission charges to the haunted houses range from 17 to 20 dollars.

The haunted houses are open only during October and early November.

On occasion, during the period the haunted houses are open, musical concerts are held in the main building. Petitioner charges admission to these concerts. The average concert admission price is approximately 40 dollars. Patrons who pay this admission charge are permitted to enter the haunted houses.

**Analysis**

Section 1105(f)(1) 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 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 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 1101(d)(2) of the Tax Law defines “admission charge” as the amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of the facilities therefore. Section 1101(d)(10) defines “place of amusement” as any place where any facilities for entertainment, amusement, or sports are provided. Petitioner’s haunted houses constitute places of amusement. *See Fort William Henry Corp. v State Tax Commission*, 52 Ad2d 664, 381 NYS2d 907; *Haunted Haywagons, Rides, Inc.*, Adv Op

Comm T&F, May 15, 1992, TSB-A-92(40)S. Therefore, admission charges to Petitioner's haunted houses are subject to sales tax.

Petitioner's admission charge that allows a patron to attend a concert also allows the patron to enter the haunted houses. The admission charge to the haunted house alone is almost half the price of the admission charge for both the haunted house and concert. While an admission charge for just a dramatic or musical performance is not subject to sales tax, a charge is taxable under Tax Law section 1105(f)(1) if it permits admission to a site for a dramatic or musical performance and to an additional site that is a place of amusement subject to sales tax. See *Dynamic Telephone Answering, Inc. v State Tax Commission*, 135 AD2d 978, 522 NYS2d 386; *lv denied* 71 NY2d 801, 527 NYS2d 767 (1987) which held that a single charge for both the rental of taxable tangible personal property and the furnishing of nontaxable services is subject to sales tax. Petitioner in this scenario is bundling admission to two distinct forms of amusements. These amusements are distinct because admission to the haunted houses is sold separately and admission to the haunted houses is not integral to providing admission to a concert. Accordingly, Petitioner's admission charge that allows a patron to attend a concert and to enter the haunted houses is subject to sales tax under section 1105(f)(1).

DATED: March 26, 2010

/S/  
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Jonathan Pessen  
Director of Advisory Opinions  
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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.