

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

TSB-A-14(19)S  
Sales Tax  
July 14, 2014

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140218A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether tickets to its bus sightseeing tours, which include staged street performances, are subject to New York State or local sales taxes. We conclude that Petitioner's tours are not subject to sales tax.

**Facts**

The Petitioner intends to provide bus sightseeing tours in midtown Manhattan. Passengers will purchase tickets at a predetermined price for a specified date and time from a box office, a ticket broker, the web, or by phone. The tour is narrated by two guides, runs 75 minutes in duration and follows a 4.2 mile route. The buses feature "coliseum seating" with the seats facing towards the side of the bus, and a floor-to-ceiling glass window for optimal viewing. Each bus seats 49 passengers and is equipped with 40 in-vehicle monitors and a state-of-the-art sound and lighting system to supplement what passengers view on the street.

The tour includes six staged street performances, with each act involving one to two performers who are employed by the Petitioner. The passengers view these acts from their seats on the bus. The acts, which may vary over time, are a combination of singing, dancing and musical performances. While the acts will enhance the overall experience on the Tour, they comprise less than 10 minutes of the 75-minute tour.

**Analysis**

Tax Law § 1105(c)(10) imposes sales tax on transportation services, whether or not any tangible personal property is transferred in conjunction therewith, and regardless of whether the charge is paid in this state or out of state, so long as the service is provided in this state.

Transportation service is the service of transporting, carrying, or conveying a person or persons by livery service, subject to exclusions as enumerated in Tax Law § 1101(b)(34). However, the definition of "livery service" in Tax Law § 1101(b)(34) excludes bus service.

For purposes of the tax on transportation services, the Department has defined a *bus* as a motor vehicle with seating capacity of fifteen (15) or more passengers in addition to the driver and used for the transportation of persons. See TSB-M-09 (7)S; TSB-M-09(2)S. Because transportation by bus service is not considered a transportation service, Petitioner's bus tour is not taxable as a transportation service under Tax Law § 1105(c)(10).

Sales tax is also imposed on admission charges in excess of ten cents “to or for the use of any place of amusement in the state, except charges for admission to . . . live dramatic or musical arts performances. . . .” Tax Law § 1105(f)(1). A “place of amusement” is defined as “[a]ny place where any facilities for entertainment, amusement, or sports are provided.” Tax Law § 1101(d)(10). Such places include without limitation

- (i) a theatre of any kind, concert hall, opera house, or other place where a performance is given;
- (ii) fairground or exhibition hall or grounds;
- (iii) golf course, athletic field, sporting arena, gymnasium, bowling alley, shooting gallery, swimming pool, bathing beach, skating rink, tennis court, handball court, billiard hall or other place for athletic exhibits.

However, a “place of amusement” has been interpreted to mean a physical space in which amusement is provided, and not an amusement device. *See Bathrick Enterprises v. Murphy*, 27 AD2d 215 (3d Dep’t 1967), *aff’d* 23 NY2d 664 (1968); *see also Fairland Amusements v. State Tax Comm’n*, 110 AD2d 952 (3d Dep’t) (Mikoll, J., dissenting), *rev’d*, 66 NY2d 932 (1985).

The fact that Petitioner’s bus tour includes a performance aspect does not make it a place of amusement. The patrons are paying to enter and ride the bus, while the acts take place on the street, and any individual in the vicinity of the performance potentially can view an act without paying the Petitioner’s charge to enter and ride the bus. Therefore, the charge is not a charge for admission to or for the use of a place of amusement and is not taxable under Tax Law § 1105(f)(1).

Accordingly, we find that Petitioner’s charges for its sightseeing bus tours are not subject to New York State or local sales tax.

DATED: July 14, 2014

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DEBORAH R. LIEBMAN  
Deputy Counsel

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. The Information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.