

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

TSB-A-15(29)S
Sales Tax
July 15, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130625A

The Department of Taxation and Finance received Petitions for Advisory Opinion from

[REDACTED]
[REDACTED] (Petitioners A, B, and C; together, "Petitioners"). Petitioners each ask whether their separate places of business are a "qualifying place of amusement" under Tax Law § 1122, and whether admission charges to Petitioner's places would qualify for the 75% exemption from the sales tax on admission charges.

We conclude that Petitioners' places of business are each a place of amusement but they are not qualifying places of amusement. Thus, Petitioners' charges to patrons to enter the places are taxable as admission charges, and the Tax Law § 1122 75% exemption does not apply to such admission charges. Each of the Petitioners must be registered for sales tax purposes and collect State and local sales taxes on the full amount of their admission charges.

Facts

Each Petitioner owns and operates a place of business in New York. Each sells tickets that entitle children ages 2 to 11 to admission to their place and to use the entire facility for the day. Petitioners charge admission for any child that will use or play at the facility. All children must be accompanied by an adult guardian to enter the facility. If a child older than 11 would like to play with the younger ones, they must also purchase an admission ticket. Adults are not charged admission.

Each place exists on a year-round basis at its location in the state. The admission charge to each place entitles patrons, without additional charge, to use all of the climbing structures, bounce houses and various games and activities at the place. Petitioners' locations are each located in retail strip malls or inside an enclosed mall. All locations are entirely indoors. Each location has bounce houses, bouncing and jumping areas, giant foam blocks, climbing features, slides, and separate party rooms. One location has a ten-foot by ten-foot Light Space Play Floor where more than 20 games can be played. That location also has an enclosed 1,000 square foot Lazer Tag arena that can hold up to 14 players at a time.

Petitioners each indicate that the "combined geographic area of the amusement rides located at such place, including all fenced-in ride areas, walkways to and among the rides, areas where patrons wait in line for the rides and all buildings, structures, machinery, equipment and ancillary facilities associated with the rides equals at least fifty percent of the entire geographic area of such place." Each Petitioner provides to each person to whom it delivers tickets for

admission to the place a ticket or paper receipt stating the amount of the admission charge paid by the person and the tax due thereon.

Analysis

Tax Law § 1105(f)(1) imposes sales tax on any admission charge (in excess of 10 cents) to or for the use of any place of amusement in New York State. Tax Law § 1101(d)(10) defines "place of amusement" as any place where any facilities for entertainment, amusement, or sports are provided. Tax Law § 1101(d)(2) 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 facilities therefor.

Petitioners' places of business are each a place of amusement because they have facilities for entertainment and amusement, such as climbing structures, bounce houses and various games and activities. Petitioners each charge their child patrons a charge in excess of 10 cents to enter their places of amusement and to use the games and other facilities for entertainment and amusement at the place. Thus, each petitioner is making admission charges to a place of amusement in this State and those charges are subject to State and local sales taxes. Each Petitioner acknowledges that its place is a place of amusement and that its charges to enter the place are admission charges. But Petitioners assert that each of their places is a "qualifying place of amusement" and that 75% of the admission charge should be exempt from tax pursuant to Tax Law § 1122.

Tax Law § 1122 exempts from the sales tax on admission charges seventy-five percent of the charge to a "qualifying place of amusement." Under § 1122, a place is a "qualifying place of amusement" if: (1) it exists on a year-round basis (whether or not it is open year round) at a fixed location in the state; (2) the admission charge to the place entitles patrons to ride at least 75% of the amusement rides at the place, without additional charge; (3) the combined geographic area of the amusement rides at the place, including all fenced-in ride areas, walkways to and among the rides, areas where patrons wait in line for the rides and all buildings, structures, machinery, equipment and ancillary facilities associated with the rides, equals at least 50% of the entire geographic area of the place; and (4) it provides to each person, to whom it delivers an admission ticket, a ticket or paper receipt stating the amount of the admission charge paid by such person and the sales tax due thereon. *See* TSB-M-04(7)S.

The "entire geographic area of such place" shall include only areas within the perimeter fencing of the place that are generally accessible to the public and that are accessible only by paying the charge for admission to the place and shall exclude administrative areas, parking lots, hotels, campgrounds and picnic areas, lakes, woodlands and other undeveloped areas and areas devoted to retail activities, such as games, arcades, and food, beverage, souvenir and merchandise sales. This definition contemplates facilities that are located primarily outdoors.

Tax Law § 1122 describes "amusement rides" as including roller coasters, Ferris wheels, carousels, water slides and all other amusement rides and water rides. Petitioners' climbing structures, bounce houses, foam blocks, and various games are not rides at all. They do not have any moving apparatus. None of them feature water elements. None of them are located outdoors

in a fenced perimeter. There are no buildings, structures, machinery, equipment, and ancillary facilities normally associated with amusement rides. Thus, the 75% exemption in Tax Law § 1122 does not apply to Petitioners' amusement charges because petitioners do not have amusement rides at their business places and because those business places are all located entirely indoors and are not areas within a fenced perimeter.

Because each Petitioner makes taxable amusement charges to its customers in New York, it is a "recipient" under Tax Law § 1101(d)(11). As a recipient, each Petitioner is also a "person required to collect tax" under Tax Law § 1131(1). As a person required to collect tax, each Petitioner must register for sales tax purposes under Tax Law § 1134(a) and collect tax on the full price of its tickets sold to its customers and file returns and remit tax required to be collected under Tax Law §§ 1136 and 1137.

DATED: July 15, 2015

/S/

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