

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-15(39)S
Sales Tax
November 13, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130723B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its charges for providing a mobile video gaming theater to its customers are subject to New York State and local sales taxes. We conclude that these charges are subject to State and local sales tax if the mobile video gaming theater is delivered to a location within New York State.

Facts

Petitioner charges its customer for the use of a 32 foot trailer (mobile video gaming theater), which it delivers to its customer's location. The trailer has five widescreen televisions and a climate-controlled interior. The trailer is self-powered by an on-board generator. Twenty people can simultaneously play video games on equipment such as Wii, Xbox or PlayStation 3. The equipment uses video games designed for those platforms. Petitioner states that its business mainly provides a form of entertainment to children at birthday parties and similar events.

Petitioner's customer pays a fixed fee for the mobile trailer to come to its location for a specified time period. Petitioner may also charge for additional time or delivery of the trailer to a location that is not in its immediate service area. There are no products sold to the customer. Petitioner requires all individuals in or around the gaming trailer and equipment to be with one of its "coaches," who oversees all the activity and operation of the equipment.

Analysis

Section 1105(a) of the Tax Law imposes sales tax on the receipts from the sale or rental of tangible personal property. Tangible personal property is defined as "corporeal personal property of any nature" Petitioner's mobile video gaming theater and its contents, including televisions, gaming equipment and video game software, are all tangible personal property. The fixed fee charged by Petitioner for the mobile guided theater to come to the customer's location for a fixed period of time is a rental charge and rental of the mobile video gaming theater is, therefore, subject to sales tax under Tax Law §1105(a).

Petitioner indicates that a "coach" is present at all times and oversees all activity and operation of equipment within the mobile video gaming theater. However, this does not change the conclusion that Petitioner is renting tangible personal property. Petitioner's "coach" is not using the equipment to entertain the customer and his or her guests. Rather, the coach is present to give instructions on the use of the equipment and to ensure it is not damaged. Accordingly, the

charge for providing the equipment for the customer's event is a charge for the rental of tangible personal property, which is subject to sales tax under Tax Law § 1105(a). *See* TSB-A-07(2)S.

DATED: November 13, 2015

_____/S/_____
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.