

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] [REDACTED] (“Petitioner”). Petitioner intends to open a sports and an amusement facility and asks whether charges to patrons for the right to participate in certain activities at the facility, and charges related to hosting birthday parties at the facility are subject to State and local sales and use tax. We conclude that Petitioner’s charges for sporting activities are not taxable. However, Petitioner’s charges for amusement options, i.e. trampoline related activities and admission to bounce houses, are taxable. Furthermore, charges related to birthday parties held at Petitioner’s facility are taxable when Petitioner provides catering services or amusement options for the party.

Facts

Petitioner intends to open a sports and amusement facility in the State outside New York City. Petitioner will not charge a fee to enter the premises. Instead, Petitioner will charge its patrons per unit of time for the following: (1) trampolining activities, including trampoline dodgeball, slam dunk basketball, and trampoline foam pit jumping; (2) volleyball; (3) junior soccer; and (4) access to bounce houses. Petitioner asserts that the charges for each type of transaction will be separate and distinct from each other. Petitioner also will allow customers to host birthday parties at the facility. In connection with birthday parties, Petitioner will make a room available to the customer. Petitioner also will give customers the option of having Petitioner supply the food and drink for the party (e.g., pizza, juice, water, and ice cream), and having the birthday party guests participate in any of the above activities. Petitioner will charge the host separately for the room, food and drink, sporting activities, and amusement options. There will be no snack bar at the facility and Petitioner will purchase the food and drink for the parties from third parties.

Analysis

Tax Law § 1105(a) imposes sales tax on retail sales of tangible personal property. Tax Law § 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 to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant.” Tax Law § 1101(d)(2) defines an “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 therefor. Tax Law § 1101(d)(10) defines a place of amusement as “[a]ny place where any facilities for entertainment, amusement, or sports are provided.”

Petitioner's facility will offer various sporting activities and amusement options, including trampolining, trampoline dodgeball, slam dunk basketball, trampoline foam pit jumping, volleyball, junior soccer, and bounce houses. Volleyball and junior soccer are sporting activities in which patrons will be participants. Consequently, charges for participation in these activities are exempt from sales tax in accordance with Tax Law § 1105(f)(1). Trampolining, trampoline dodgeball, slam dunk basketball, and trampoline foam pit jumping are not sporting activities in which the patron is a participant. Accordingly, Petitioner's charges for these amusement options are taxable under Tax Law § 1105(f)(1). In addition, Petitioner's charges to enter the bounce houses constitute admission charges to a place of amusement and are taxable under Tax Law § 1105(f)(1). *See Matter of 1605 Book Center, Inc., v. Tax Appeals Tribunal*, 188 AD2d 694, 696; (3^d Dep't 1992), *aff'd*, 83 NY2d 240, (1994).

Petitioner also will host birthday parties for which it will collect individual charges for room rental, sporting activities, amusement options, and/or food and drink. Petitioner does not have a snack bar and the food and drink will be provided by a third party. Petitioner's charges for food and drink are subject to tax. *See* Tax Law § 1105(d)(i). Petitioner can purchase the food and drinks for resale exempt from tax if Petitioner provides the vendor with a properly completed Form ST-121, *Exempt Use Certificate*.

While Petitioner's charges for room rentals and sporting activities are not subject to sales tax, the question arises whether those items are taxable when they are being sold in conjunction with the taxable sale of food and drink during birthday parties held at Petitioner's facility. *See* TSB-A-02(12)S. When Petitioner provides food, beverages, and other services for a birthday party, Petitioner meets the definition of a caterer. *See* TB-ST-110. In general, all charges by caterers related to a customer's event are taxable. *See Id.* A caterer's charges for catering prepared food and drink and any "other charge" for the coordination of the event are subject to sales tax under Tax Law § 1105(d)(i). *See* TSB-A-03(20)S *citing* TSB-H-86(138)S. Petitioner's charge for the use of a room and/or for sporting activities in connection with its catering of a birthday party falls within the scope of the term "other charge" specified in Tax Law § 1105(d)(i). *Id.* Consequently, the entire charge for a catered birthday party at Petitioner's facility is subject to sales tax.

The taxability of birthday parties that are not catered turns on whether patrons engage in sporting activities or amusement options. Charges for a birthday party that consists simply of a room rental fee and charges for sporting activities are not taxable, since charges for room rentals and sporting activities are not individually subject to sales tax. As for birthday parties at which patrons partake in any of the amusement options available, when taxable and nontaxable items or services are sold together as one package, the entire charge is subject to sales tax (*See* 20

NYCRR 527.1(b), 532.1(b)) unless the following criteria apply: 1) the taxable and nontaxable items may be purchased separately, 2) the charges for the items are separately stated on the bill or invoice, and 3) the charges are reasonable in relation to the total charge. *See* TB-ST-860. If all three of these criteria are satisfied, sales tax may be collected only on the taxable items, in this case the charges for the amusement options.

DATED: November 10, 2020

/S/

DEBORAH R. LIEBMAN
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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.