

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether its charges for admission to its “mystery” or “escape” rooms to play an interactive game are subject to State and local sales taxes.

We conclude that Petitioner’s charges for admission to and use of its mystery rooms are subject to sales tax.

Facts

Petitioner is a New York limited liability company located in New York City. Petitioner provides “mystery rooms” or “escape rooms” (“mystery rooms”) where groups of up to 10 people are locked in a room and collectively try to solve mental exercises, puzzles and riddles with the aim of unraveling a mystery. Participants engage one of several “story-driven missions,” which sometimes include escaping the room. Petitioner does not charge admission to enter the premises, but charges each customer a fee to enter a mystery room and participate in a mission. The mystery rooms are designed by a professional theater set designer. Each mystery room is supervised by an employee who plays a part in the mission and who sometimes enters the room in character to assist the participants. Petitioner advertises the missions as fun and challenging group activities for families, friends, students, tourists and others. It also markets the missions as team-building activities for businesses and organizations, because they are designed to foster teamwork and group communications.

Analysis

Tax Law § 1105(f)(1) imposes sales tax on “any admission charge ... to or for the use of any place of amusement in the state.” Certain admissions charges are exempt from sales tax, including live dramatic or musical arts performances and sporting activities in which the patron is a participant. *Id.* An “admission charge” includes “[t]he amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor.” Tax Law § 1101(d)(2). 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).

Petitioner’s mystery rooms are places of amusement used for the provision of entertainment. See *Matter of 1605 Book Center, Inc., v. Tax Appeals Tribunal*, 188 AD2d 694, 696 (3d Dep’t 1992), *aff’d*, 83 NY2d 240, (1994). Petitioner states that its mystery

rooms are intended to be a form of amusement. The missions are designed to provide mentally stimulating entertainment. These activities fall within the common understanding of the term “amusement.” See *Wien v. Murphy*, 28 AD2d 222 (3d Dep’t 1967) (holding that the common understanding of “amusement” included a “diversion” or “recreation” or a “pleasurable occupation of the senses, or that which furnishes it.”); see also *Matter of Fort William Henry Corp. v. State Tax Comm’n*, 52 AD2d 664 (3d Dep’t 1976) (holding that the status of a facility as a place of amusement was not weakened by historic or educational significance).

Petitioner contends that its charges are exempt from sales tax on several grounds, but none of the grounds offered apply to the admissions to Petitioner’s mystery rooms. For example, Petitioner suggests that it is providing a live dramatic or musical arts presentation based on the in-character participation of its employee. However, the employee’s interactions do not transform petitioner’s amusement into an exempt dramatic or musical arts performance. See 20 NYCRR 527.10(d)(2) Example 5; see also *Matter of Doherty d/b/a Eerie Productions*, DTA No. 826909 (Tax Appeals Tribunal, May 29, 2019) (presence of actors supported a determination that a haunted attraction was a place of amusement). Petitioner also argues that its charges should be exempt because its patrons are active participants. However, the exclusion for participating patrons applies only to admissions to sporting activities. Petitioner concedes that its missions do not involve physical activity. Therefore, they cannot be considered sporting activities. Nor is it a “networking activity,” the primary function of which is to facilitate dating or making business contacts. See TSB-A-02(58)S.

Petitioner charges customers to enter the mystery rooms and to use the facilities in those rooms to participate in an entertainment activity. Thus, the charge is within the meaning of Tax Law § 1101(d)(2) and it is subject to sales tax under Tax Law § 1105(f)(1). See *Matter of 677 New Loudon Corp. v. Tax Appeals Tribunal*, 19 NY3d 1058 (2012); *Matter of 1605 Book Center, Inc.*, *supra*.

DATED: August 20, 2024

/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.