

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-82(46)S
Sales Tax
December 22, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811006B

On October 6, 1981 a Petition for Advisory Opinion was received from Darien Lake Fun Country, Inc., 9993 Allegany Road, Corfu, New York.

The issues raised are whether sales tax is due on (1) the rental of coin-operated amusement devices to be used in an amusement park setting, and (2) the purchase of amusement park rides.

Section 1105(a) of the Tax Law imposes a tax on the receipts from retail sales of tangible personal property. The term "retail sale" is defined, in relevant part, in section 1101(b)(4)(i) of the Tax Law, as a sale "of tangible personal property to any person for any purpose, other than . . . for resale . . ." The term "sale" is defined, in section 1101(b)(5) of the Tax Law, so as to include the rental or leasing of property. It has been judicially determined that payments for the operation of coin-operated amusement devices do not constitute receipts from the sale of tangible personal property. Bathrick Enterprises, Inc. v. Murphy, 27 AD 2d 215. Accordingly, petitioner's leasing of coin-operated amusement devices constitutes not a purchase for resale but a purchase at retail, the receipts from which are subject to tax under section 1105(a) of the Tax Law. The taxable receipts in this instance are the total payments made under the applicable equipment lease agreement. Such rental payments are stated in such agreement to be an amount equal to "fifty per cent (50%) of the gross receipts collected by Lessee." The provision of the Sales and Use Tax Regulations cited by Petitioner, 20 NYCRR §526.10(g), is not applicable here in that Petitioner is not required to "pay over its receipts" to the Lessor, as it is put in the regulatory provision, but, rather, in the terms of the lease, to pay a "total rent" which is merely "equal to" fifty per cent of the receipts.

Receipts from the operation of amusement park rides are subject to the tax on admissions imposed under section 1105(f)(1) of the Tax Law. 20 NYCRR 527.10(b)(3)(iv); Outdoor Amusement Business Association v. State Tax Commission, ___ N.Y. 2d. ___ (1982) (adopting the dissent in 84 AD 2d 952). Such receipts are therefore not taxable under section 1105(a) of the Tax Law, which imposes the tax on receipts from the retail sale of tangible personal property. Accordingly, the purchase of such rides by Petitioner constitutes not a purchase for resale but a purchase at retail, the receipts from which are subject to tax under section 1105(a) of the Tax Law.

DATED: December 2; 1982

s/Frank J. Puccia
Director
Technical Services Bureau