

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

TSB-A-85(4)S  
Sales Tax  
May 3, 1985

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S831220A

On December 20, 1983 a Petition for Advisory Opinion was received from Folz Amusement & Game Co., Inc., 3401 Lawson Boulevard, Oceanside, New York 11572.

The issue raised is whether the purchase of a video game machine, which is to be contributed to a partnership, is a purchase for resale and therefore not subject to the Sales Tax.

As the operator of a video game business Petitioner enters into an arrangement with a location owner for placement of a machine on premises furnished by the location owner who also supplies electric power and security for the machine. Petitioner retains legal title and provides maintenance. He keeps the only key and shares the receipts from the machine equally (50/50) with the location owner. Petitioner contends the arrangement is a partnership.

Petitioner's inquiry refers to two separate transactions:

- (1) The purchase of the video game machine by Petitioner,  
and
- (2) The placement of the machine on the third party's business premises,  
which vendor considers a contribution to a partnership.

The following definitions of Section 1101(b) of the Tax Law apply:

- (1) Purchase at retail. A purchase by any person for any purpose other than....
  - (4)(i)(A) For resale as such. . .
  - (4)(iii) The term retail sale does not include:  
The contribution of property to a partnership in consideration for a partnership interest therein.
  - (4)(iii)(E) Use. The exercise of any right or power over tangible personal property by the purchaser. . .

Accordingly, the acquisition of the property by the Petitioner is not a purchase for resale inasmuch as the property was purchased for use by the petitioner. Thus, the purchase of the property is a "purchase at retail" and is a transaction subject to sales tax under section 1105 of the Tax Law.

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The subsequent contribution by Petitioner of the property to a partnership in consideration for a partnership interest therein (if any such contribution takes place) will not change the taxability of the acquisition of the property by Petitioner as described above.

DATED: April 12, 1985

FRANK J. PUCCIA  
Director  
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions  
are limited to the facts set forth herein.