

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

TSB-A-87(36)S  
Sales Tax  
September 25, 1987

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S870622A

On June 22, 1987, a Petition for Advisory Opinion was received from Hoffman's Playland Inc., P.O. Box 652, E. Newton Road, Newtonville, New York 12128.

The issue raised by Petitioner is whether the purchase of tickets to use an amusement ride is subject to sales tax under section 1105(f)(1) of the Tax Law.

Petitioner is a corporation that operates and maintains an amusement park area in which rides such as a ferris wheel, merry-go-round, etc, are available. There is no admission charge to enter the park area. Each ride requires the purchase of a specified number of tickets.

Section 1105(f)(1) of Article 28 of the Tax Law imposes a tax on "[a]ny 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 ....

A place of amusement is defined in the statute as "[a]ny place where any facilities for entertainment, amusement, or sports are provided." (Tax Law §1101, subd. [d], par. [10]). An admission charge is "[t]he amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of facilities therefore." (Tax Law §1101, subd. [d], per. [2]).

Recent court decisions have developed a two-part test to determine whether sales tax is due on tickets sold to the public for amusement rides (see Fairland Amusements, Inc. v. State Tax Comm. 66 N.Y.2d 932, 498 N.Y.S.2d 796 (1985), revg. on dissenting opinion below 110 A.D. 2d 952, 487 N.Y.S. 2d 879). First, the money paid must be an admission charge, either a fee paid for entrance to a place or for the use of facilities. (Ibid, citing Outdoor Amusement Business Assn. v. State Tax Comm., 57 N.Y.2d 790, 455 N.Y.S. 2d 586, revg. on dissenting mem. below 84 A.D. 2d 950, 952, 447 N.Y.S. 2d 69). Second, the sales tax is imposed only on the admission charge to or for the use of any place of amusement. A place of amusement may be interpreted as meaning only the physical space within which the amusement is provided or the amusement facility itself. It has been determined that an admission charge to enter a location where amusement rides are found is subject to tax while an admission charge to use a ride is not subject to tax regardless of whether there is a charge for entering the location where amusement rides are found. Fairland Amusements, supra.

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Accordingly, the statute and applicable definitions must be construed to apply a tax only on the admission charge to enter a location where the amusement facilities are found.

Inasmuch as Petitioner's sale of tickets is for the use of the rides and not a fee for admission to the park itself a tax may not be imposed under section 1105(f)(1) of the Tax Law.

DATED: September 25, 1987

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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