

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

TSB-A-90 (6) S  
Sales Tax  
February 8, 1990

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891003A

On October 3, 1989 a Petition for Advisory Opinion was received from Little Ozzie's Inc. 7581 Gifford Road, Rome, New York 13440.

The issues raised by Petitioner, Little Ozzie's Inc., are whether the charges for the use of Go-Karts for racing on a circular track on the premises are subject to sales tax and whether the charges for packaged ice cream bars sold on the premises are subject to sales tax.

Petitioner's raceway consists of Go-Kart racing on a circular track. There is no admission charge; only a charge to use the Go-Kart. Packaged ice cream bars are the only items that are sold on the premises.

Section 1105(f) of the Tax Law imposes taxes on: "(1) 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, such as bowling alleys and swimming pools."

Section 527.10(b)(3) of the Sales Tax Regulations defines "place of amusement", as "Any place where any facilities for entertainment, amusement or sports are provided." Petitioner's business operation meets the definition.

Since Petitioner's only charge is for the use of a Go-Kart which includes the use of the track, his single charge is considered to be an exempt charge for its use of facilities for sporting activities.

It is noted that no exemption is provided for Petitioner's purchases of Go-Karts or any related equipment, supplies or parts.

Section 1105(d)(i) of the Tax Law imposes a sales tax on the receipts from the sale of ". . . every sale of food and drink of any nature or of food alone. . ."

Section 1105(d)(i)(1) imposes the tax "in all instances where the sale is for consumption on the premises where sold."

Section 527.8 of the Sales Tax Regulations define the terms "premises" and "consumption on premises" as follows:

(c) Premises. The term premises shall mean the total space and facilities in or on which the vendor conducts his business, including but not limited to parking areas for the convenience of in-car consumption, counter space, indoor or outdoor tables, chairs, benches and similar conveniences.

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(d) Consumption on premises. The phrase for consumption on the premises shall mean that the food or drink sold may be consumed on the premises where the vendor conducts his business.

Accordingly, the sale by Petitioner of packaged ice cream bars for on premises consumption, at its Go-Kart facility is subject to sales tax.

DATED: February 8, 1990

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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