

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

TSB-A-94 (24)S
Sales Tax
June 8, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940201A

On February 1, 1994, a Petition for Advisory Opinion was received from Meltzer, Lippe, Wolfe, Schlissel & Sazer, P.C., 190 Willis Avenue, Mineola, N.Y. 11501.

The issue raised by Petitioner, Meltzer, Lippe, Wolfe, Schlissel & Sazer, P.C., is whether ticket sales to a movie-based simulator ride are subject to New York State sales tax.

Petitioner's client is planning to build and operate a motion simulator attraction consisting of flight simulators and related computer-controlled film projection technologies. This film/equipment apparatus will simulate an aerial sightseeing tour. This "movie/ride" will be located on leased space within an office building.

There will be two 40 passenger computer controlled flight simulators designed to look like jet/rocket helicopters. The simulators (computer controlled aircraft flight simulators) will have a range of motion along 6 axes. At the front of each simulator is a 20' x 16' screen upon which a fast-paced film is displayed. The simulator will also contain an advanced 8 channel digital sound system with 4 dual amplifiers.

Tickets will be purchased separately or may be packaged with tickets for other tourists attractions in the locality. When purchased in the package, prices will be discounted. However, the discounted price attributable to each attraction will be separately stated.

The actual simulated "flight" time for the movie/ride will be 4-6 minutes. While waiting for the prior group to complete the movie/ride attendees will be placed in a "pre-boarding" waiting area. While in the waiting area, the attendees will be kept occupied by various multimedia displays including previews of the ride and historical chronicles of the subject of the tour. Passengers will then receive instructions and board one of the two "spacecopters." Finally, after the ride has been completed they will pass through the lobby area containing a beverage, food and souvenir concession area before exiting the attraction.

Section 1105(f)(1) 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"

Section 1101(d)(10) of the Tax Law defines a place of amusement as "[a]ny place where any facilities for entertainment, amusement, or sports are provided." Section 1101(d)2) of the Tax Law provides that 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."

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Petitioner's client's movie based flight simulator is a ride. It is not a place of amusement as defined in Section 1101(d)(10) of the Tax Law and thus the fee for its use is not an admission charge as defined in Section 1101(d)(2) of the Tax Law. Since Petitioner's client's sale of tickets will be for the use of the ride and not an admission charge to a place of amusement, the proceeds from the sale of the tickets will not be subject to the sales tax imposed under Section 1105(f)(1) of the Tax Law. (See: Fairland Amusements, Inc. v State Tax Commission, 66 NY2d 932).

DATED: June 8, 1994

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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