

TAXABLE STATUS OF AMUSEMENT RIDES
AND ADMISSION CHARGES

As a result of the Court of Appeals decision in Fairland Amusements, Inc. v. State Tax Commission, 66 NY2d 932 [TSB-H-85(117.3)S], the Tax Department has reevaluated its policy on the taxation of charges made for the use of amusement rides.

It was the Tax Department's position that charges for the use of amusement rides were subject to sales tax under section 1105(f)(1) of the tax law, since such charges were considered to be for the use of entertainment facilities at a place of amusement. However, in view of the courts ruling in Fairland Amusements, Inc. the Tax Department has adopted a new policy on the taxation of amusement rides. Under this new policy the sale of tickets, tokens, etc. which are solely for the use of amusement rides are no longer subject to sales tax. The Tax Department will amend portions of sections 526.7 and 527.10 of the sales and use tax regulations to reflect this change. While sales tax is not applicable to charges for the use of amusement rides, charges for admission to an amusement park or similar site where such rides are located remain subject to tax.

Example 1 - An amusement park operator does not charge admission to the park, but sells tickets for rides at 25¢ each or a book of six tickets for \$1.00. The 25¢ charge for the single tickets and the \$1.00 charge for the book of tickets are exempt from sales tax as the charges are for the use of amusement rides.

Example 2 - An amusement park operator charges admission to the park and sells separate tickets for rides at 25¢ each or a book of six tickets for \$1.00. The charge for the admission to the park is taxable, but the 25¢ charge for the single tickets and the \$1.00 charge for the book of tickets are exempt.

Where a place of amusement sells only one type of ticket and that ticket entitles the customer to admission to the park and use of the rides, the full price of the ticket is subject to sales tax. However, where a place of amusement sells both a pay-one price ticket and a general admission ticket, the portion of a pay-one-price ticket attributable to the use of rides will not be subject to sales tax where:

- (i) the pay-one-price ticket separately states the charge allocated to the use of the rides and the charge for admission, and
- (ii) the general admission ticket does not allow the customer use of the rides, and

- (iii) the admission charge shown on the pay-one-price ticket is the same or reasonable in relation to the charge shown on the general admission ticket.

Example 3 - An amusement park sells only a pay-one-price ticket which includes the charge for admission to the park and use of the rides within the park. The total ticket price is subject to sales tax.

Example 4 - An amusement park sells a \$4.00 general admission ticket which limits the customer to admission to the park; the customer cannot use any of the amusement rides unless he purchases a separate ticket or tickets. The park also sells a \$10.00 pay-one-price ticket, which separately indicates a \$6.00 charge for the use of the amusement rides and a \$4.00 charge for admission. Since the separate charge for admission (\$4.00) on the pay-one-price ticket is the same or reasonable when compared to the general admission ticket limiting the customer to admission to the park, the separately stated portion of the pay-one-price ticket (\$6.00) representing the use of the amusement rides is not subject to sales tax.

Vendors who have previously collected sales tax on sales that have now been determined to be nontaxable, and who have remitted such tax to the Tax Department may apply for a refund or credit of the tax paid, provided they establish to the satisfaction of the Tax Commissioner that they have refunded the tax to the customer and that they have maintained an accurate record of the repayment as provided for in section 534.2 of the sales and use tax regulations.

Sales tax that has been collected and not yet remitted is to be remitted to the Tax Department, except in those cases where the refund provision, as described in the above paragraph, applies.