

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

TSB-A-85(53)S
Sales Tax
November 8, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850611B

On June 11, 1985 a Petition for Advisory Opinion was received from Tub and Tan, Inc., 283 Oxford Street, Rochester, New York 14607.

The issue raised is whether the use of either tanning beds or hot tubs is subject to sales tax.

Petitioner has constructed tanning beds and hot tubs on its premises for use by the general public for a fee. In using a tanning bed, a customer enters a specially equipped room and exposes his or her body to adjustable light exposure which will give a simulated sun tan. Hot tubs, which are situated in private rooms, are large water filled tubs with constant circulation of hot filtered water. The customer submerges himself or herself in the tub for a period of time.

The sales tax is imposed on the receipts from every retail sale of tangible personal property with certain limited exceptions as well as on certain specifically enumerated services. (Tax Law 1105). The use of Petitioner's tanning beds and hot tubs under the circumstances described above does not constitute a taxable transaction under section 1105 of the Tax Law; therefore, neither a New York State nor the Monroe County local tax would be due. It should be noted, however, that New York City imposes a tax on ". . . every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna bath and similar establishments and every charge for the use of such facilities, whether or not any tangible personal property is transferred in conjunction therewith..." (Tax Law 1212-A(b)). The use of Petitioner's facilities in New York City would therefore be subject to such tax.

DATED: September 10, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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