

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

TSB-A-86(32)S
Sales Tax
September 3, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860422B

On April 22, 1986, a Petition for Advisory Opinion was received from Madison Square Garden Center, Inc., Four Pennsylvania Plaza, New York, New York 10001.

The issue raised is whether a landlord who provides solely space and building related services to show promoters for subdivision and rental to show vendors, but does not itself organize and conduct shows, is a promoter under the Sales and Use Tax Law and Regulations.

Section 1131(5) of the Tax Law describes a "Promoter" as:

...any person who, either directly or indirectly, rents, leases or grants a license to use space to any person for the display for sale or for the sale of tangible personal property or services subject to tax, at more than three shows during the calendar year, or who operates more than three shows during the calendar year. For purposes of determining whether three shows have been held, the conduct of an activity described in subdivision six on one day alone or on a series of up to seven consecutive days shall be deemed to constitute a single show.

In section 1131(6) of the Tax Law, a "Show" is stated to include:

...a flea market, craft show, antique show, coin show, stamp show, comic book show, fair and any similar show, whether held regularly or of a temporary nature, at which more than one vendor displays for sale or sells tangible personal property or services subject to tax.

Regulation Section 533.1(c) explains further:

(2). . . .

(i) For purposes of determining the existence of a show, the permanent nature of the premises or structure in which the activity is held is not relevant. Instead, it is the transient nature of the vendors which is relevant. Accordingly, when there are two or more vendors operating on the same premises, and two or more vendors have leases or licenses to use such premises for a period of less than one year or where the leases or licenses to use may be cancelled on notice of less than 30 days, then a show is presumed to exist for all purposes of this Part. Another fact which indicates the existence of a show is where the vendors regularly remove their merchandise from the premises at the close of each business day.

(ii) If no taxable tangible personal property or services are displayed for sale or sold, then the activity is not a show for purposes of this subdivision.

(iii) Sales of food and drink for consumption on the premises, although taxable, will not be considered for purposes of determining the existence of a show. Further, admission charges for games of chance or skill, like those typically operated on a carnival midway, although taxable, will not be considered for purposes of determining the existence of a show.

(3). . . A person may be a promoter with respect to show vendors operating on his premises, and at the same time not a promoter with respect to vendors who have permanent places of business on the same premises. . . If there is more than one person involved in the organization or operation of a show who is within the definition of promoter, then all such persons must file a single notice of show and application for show permit as co-promoters.

Example 1: A, the owner of the X shopping mall, leases an area in the mall to B for the purpose of holding a flea market on each of five weekends during the year. B intends to sublease space to individual show vendors. If neither A nor B is involved in organizing or operating any show other than at the X shopping mall, then, after the third weekend the flea market is held, both A and B are promoters subject to this subdivision. While A, the owner of the X mall, is a promoter with respect to the show vendors participating in the flea market, A is not a promoter with respect to the permanent vendors of the X mall.

Example 2: A, the owner of the X shopping mall, leases area in the mall to B for the purpose of holding a flea market on the first weekend of July. B intends to sublease portions of the mall area to individual show vendors. A is not involved in organizing or operating any other show during the calendar year. B, however, will operate similar shows on three weekends during June at a location other than the X shopping mall. With regard to the flea market at the X shopping mall, A is not a promoter, but B is a promoter subject to this subdivision.

Promoters must file a notice of show and an application for show permit 10 days prior to the opening of the fourth show.

Publications of the Department of Taxation and Finance offer additional interpretations of the Tax Law and Regulations as follows: "The promoter organizes or operates a show by granting the use of a location." (Sales Tax Information for Show Vendors and Promoters, Publication 815 [3/85]).

"Owners or renters of parking lots, shopping malls, hotels, or other real property at which shows are held and organizers of shows . . . are promoters." (Information for Promoters, Form TP-375.3 [3/84]).

"After the third . . . show during the calendar year held at the same location or operated or sponsored by the same individual or organization, the operator, sponsor or site owner will be required to comply with the show promoter requirements of the Sales and Use Tax Law." (Technical Services Bureau Memorandum, Show Promoter Requirements as They Apply to Farmers' Markets, July 10, 1980, TSB-M-80(8)S).

Accordingly, if Petitioner provides space for more than three shows during the calendar year it will be operating as a promoter. The organization renting the space may or may not also be a promoter depending on whether or not they have held more than three shows during the year. If both the Petitioner and the show organizer are promoters under the law, each will be subject to the requirements stated in the Sales and Use Tax Regulations which are summarized as follows:

1. To obtain a show permit for the fourth and each subsequent show in a calendar year (Permit to Operate a Show, Form PR-169.2), and to prominently display it at the main entrance to the show.
2. To allow only registered vendors who have properly posted their certificate of authority at their show booth to display or sell goods subject to sales tax.
3. To file a Report of Show (Form TP-375.2) listing names, addresses, New York sales tax identification numbers, and rental charges per month for each participant. The report should list separately vendors claiming exclusively tax exempt sales.
4. To maintain supporting records.

20 NYCRR 533.1(c), (d); 533.2(e)(7); 533.3(i).

When a show has more than one promoter, each co-promoter must file a Report of Show (TP-375.2), but only one co-promoter needs to list (on the back of the form) the participating vendors. The co-promoters may decide by mutual agreement who is to furnish the show vendor information; both, however, are responsible for the filing of the list. See Form TP-375.3 (3/84), Information for Promoters, for detailed instructions.

Petitioner inquires as to its obligations under the law when renting space to the organizer of a yearly trade show, who conducts no other shows during the year. For sales tax purposes, the organizer of such a show is not a promoter. Petitioner, after the third show held on its premises in a calendar year, is considered the promoter of the show. To fulfill the law's requirements, Petitioner must ask the vendor's representative to supply the show vendor information (item 3. above) necessary to file the Report of Show.

TSB-A-86(32)S
Sales Tax
September 3, 1986

It should be noted that only one "Permit to Operate a Show" (Form PR-169.2 [12/84]) is needed when more than one show is held at the same location. Thus, Petitioner can simplify its duties as a promoter by obtaining, whenever possible, permits that cover multiple shows.

DATED: September 3, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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