

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

TSB-A-88(2)S
Sales Tax
December 9, 1987

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S870917A

On September 17, 1987, a Petition for Advisory Opinion was received from Ralph M. Toscano Jr., 23 Hathaway Road, Rochester, New York, 14617.

The issue raised is whether the charge for admission to a 'survival game' and equipment required to play the game is subject to sales tax when the customer is a participant in the game.

Survival games are generally played on a playing field with two or more parties engaged in a shooting match using CO₂ powered weapons that shoot non-toxic paint pellets. While not stated in the Petition, it is presumed this is the type of survival game which is the subject of Petitioner's inquiry.

Section 1105(a) of the Tax Law imposes a sales tax on the receipts from every retail sale of tangible personal property, except as otherwise excluded or exempted.

Section 1105(f)(1) of the Tax Law imposes a sales tax on any admission charge 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.

Section 1132(c) of the Tax Law provides that all amusement charges of any type mentioned in section 1105(f) are subject to tax until the contrary is established and that the burden of proving that any amusement charge is not taxable is on the person required to collect tax.

Regulation section 527.10(d)(4) illustrates the applicability of section 1105(f)(1) of the Tax Law with the following examples:

Example 6: Admission charges for the use of bowling lanes and swimming pools are not subject to tax. However, any charge for the use of tangible personal property in conjunction with the sporting activity is taxable. Included as taxable would be bowling shoes, towel and locker rentals.

Example 7: A ski resort's charge for lift tickets is an exempt admission charge to a sporting facility in which the patron will be a participant. If the facility charges for the use of skis or other equipment, such charge is for the rental of tangible personal property which is subject to tax. (20 NYCRR 527.10).

Accordingly, the admission charge for participating in the survival game is not subject to tax since the patron is a participant.

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If the operator of the survival game provides equipment (pistol, goggles, paint and CO₂) necessary to play the game and does not charge a fee separate and distinct from the admission fee, then such operator is not selling tangible personal property within the meaning of section 1105(a) of the Tax Law. (20 NYCRR 527.10 (b)(1)(i)). National Survival Game of New York, Inc. Advisory Opinion of the State Tax Commission, September 19, 1985, TSB-A-85(47)S. Such a situation is analogous to a bowling alley providing bowling balls or a miniature golf course providing putters and golf balls. In each of these cases, the charge to the patron is the same whether or not the participant uses the equipment (e.g. a bowler using his own ball instead of a house ball).

However, it should be noted that such operator is required to pay sales tax on its purchases of all such equipment.

If the Petitioner charges a fee (in a separate and distinct transaction from the admission) for the use of equipment, such a transaction constitutes a taxable sale of tangible personal property pursuant to section 1105(a) of the Tax Law. Accordingly, the Petitioner may purchase such equipment tax free by giving his supplier a properly completed Resale Certificate (Form ST-120). If the Petitioner purchases equipment using a Resale Certificate, the Petitioner must maintain adequate records to verify the sales and use tax status of such purchases. (20 NYCRR 533.2). Equipment purchased tax exempt with a Resale Certificate which is supplied to the patron as part of the admission, must be reported as a purchase subject to use tax. (20 NYCRR 532.4(d)(3)).

DATED: December 9, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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