

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

TSB-A-92 (40)S
Sales Tax
May 15, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911217A

On December 17, 1991, a Petition for Advisory Opinion was received from Haunted Haywagon Rides, Inc., PO Box 131, Katonch, New York 10536.

The issue raised by Petitioner, Haunted Haywagon Rides, Inc., is whether charges for admissions to "Haunted Hayride" are exempt from sales tax as admissions to a dramatic performance.

Petitioner produces a production known as "Haunted Hayride". A basic script is written for the individual characters included in the scenarios. The scripted characters are based on real-life and fictional characters which relate to the Halloween theme of the show, i.e. Leatherface from The Texas Chainsaw Massacre, Norman Bates from Psycho, The Wolfman, etc. The script is prepared by an experienced author of dramatic works.

Petitioner utilizes actors and actresses from local theatre groups to perform in an outdoor theater setting. Petitioner utilizes the process and procedures of other theatrical endeavors by conducting auditions for performers, preparation of scripts, rehearsals, set construction, costume design and director coaching.

Each actor/character memorize their portions of the script, and are told in which areas of the script they could ad-lib. Each actor is given specific blocking (i.e., where to stand, where to move, etc.) and is coached in their individual characterizations to maintain the artistic and dramatic originality of each character. The actors are then rehearsed in their individual scenarios which are part of the entire show.

A haywagon is used primarily as a seating arrangement by which audiences may witness the theatrical performances of each actor at scheduled artistic performances of a character. Patrons board haywagons for access to twenty or more one to two minute performances, with no continuity between the individual acts, at different settings on grounds leased by Petitioner. Each wagon is equipped with a public address system device for use by trained actors, serving as rehearsed narrators who have memorized a script of their own character. Each wagon contains seating for fifty people, for which advanced reservations are required. Petitioner conducts about twenty performances, all during the month of October.

The actors begin to perform their parts, using the scripted dialogue, as each haywagon approaches, maintaining the scripted character during the whole segment in which the wagon was in view. Audience participation is totally prohibited since it would interfere with the actor's performance.

Section 1105(f)(1) of the Tax Law imposes sales tax upon "[A]ny admission charge in excess of ten cents to or for the use of any place of amusement in the State, except charges for admission to . . .dramatic or musical art performances, . . ."

Section 527.10(d)(2) of the Sales and Use Tax Regulations provides as follows:

(2) Charges for admission to dramatic or musical arts performances are excluded from tax. Dramatic and musical arts performances do not include variety shows, magic shows, circuses, animal acts, ice shows, aquatic shows and similar performance

* * * *

Example 5: A show is composed of several acts in which performers dressed as story book characters, appear with musical accompaniment portray scenes from books, and invite audience participation. This does not qualify as a dramatic or musical arts presentation. (emphasis added)

Petitioner is conducting a variety show within the meaning and example of Section 527.10(d)(2) of the Sales and Use Tax Regulations since, with the exception of the Halloween theme, there is no continuity between the characters and the twenty or more acts presented. Accordingly, pursuant to Section 1105(f)(1) of the Tax Law and Section 527.10(d)(2) of the Sales and Use Tax Regulations "Haunted Hayride" is not a dramatic or musical arts performance and therefore the admission charges to the performances are subject to sales tax.

DATED: May 15, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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