

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

TSB-A-93 (64) S
Sales Tax
December 27, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930927B

On September 27, 1993, a Petition for Advisory Opinion was received from Dianne C. Hoffman, C.P.A., Craig Morris & Company, 356 South Oyster Bay Road, Syosset, New York 11791.

The issue raised by Petitioner, Dianne C. Hoffman, C.P.A., is whether Petitioner's client is required to collect sales tax on the services it will provide consisting of play groups and parties for preschool children.

Petitioner's client will operate a business which consists of providing preschool children with play groups and parties.

The play groups are classes for preschool children and all activities are of a social and educational nature.

The other business activity will be children's parties, primarily birthday parties. At the party the primary focus will be children's entertainment such as a clown, magician or other animated characters, or an instructional activity such as martial arts or aerobics or a craft and play activity. As part of this service during the party for a short period there will be pizza, beverage and cake served. All food and beverages will be purchased from outside establishments. No preparation will be done on the premises. In addition, party favors and candy will be distributed to each attending child.

Section 1105(d)(i) of the Tax Law imposes a tax upon:

"The receipts from every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from every sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers (except those receipts taxed pursuant to subdivision (f) of this section)." (Emphasis supplied)

Petitioner's client's charge for parties that include both food, beverages, and entertainment, are subject to the tax imposed under Section 1105(d)(i) of the Tax Law. Petitioner's client may take a credit on its sales tax return for any sales tax it paid on the purchase of food and drink.

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The charge by Petitioner's client for play groups (classes for preschool children) is not one of the services encompassed within the imposition of sales tax under Section 1105(c) of the Tax Law and therefore is not subject to sales tax unless the service is sold in conjunction with the sale of food and drink.

DATED: December 27, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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