

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-03(39)S
Sales Tax
November 18, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S030507A

On May 7, 2003, the Department of Taxation and Finance received a Petition for Advisory Opinion from Bonnie J. Barton, P.O. Box 30, North River, New York, 12856.

The issue raised by Petitioner, Bonnie J. Barton, is whether charges and fees for mining lectures and tours are subject to sales tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner operates the Gore Mountain Mineral Shop. Petitioner offers to the public tours of garnet mines and lectures about local mining, history, gemology, and geology. In addition, Petitioner operates a gift shop for patrons to visit whether or not they attend the lecture.

The lectures offered by Petitioner are performed on a scheduled basis. The content of the lectures and their delivery is closely scripted. As advertised, each lecture covers local mining history, gemology, geology and present-day operations. Lectures are performed away from the retail shop. Petitioner has never charged admission to enter the general premises. The only charge made is to attend the scheduled lectures performed by trained employees as part of the tour. Petitioner submitted training materials and advertisements along with her Petition.

Petitioner's advertisements clearly state "Garnet Mine Tours." A tour of the mine site includes a rock exhibit, garnet collection and a lecture about gemology, mining history and present day operations. The advertisement itself is a discount coupon providing one dollar off the admission charge.

Applicable law and regulations

Section 1101(d) of the Tax Law provides, in part:

When used in this article for purposes of the tax imposed under subdivision (f) of section eleven hundred five, the following terms shall mean:

* * *

(2) Admission charge. The amount paid for admission, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor.

* * *

(5) Dramatic or musical arts admission charge. Any admission charge paid for admission to a theatre, opera house, concert hall or other hall or place of assembly for a live dramatic, choreographic or musical performance.

* * *

(10) Place of amusement. Any place where any facilities for entertainment, amusement, or sports are provided.

Section 1105(f)(1) of the Tax Law imposes sales tax upon:

Any admission charge where such admission charge is 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 arts performances. . . .

Section 527.10 of the Sales and Use Tax Regulations provides, in part:

(b) Definitions. (1) Admission charge.

(i) The amount paid for admissions, season ticket or subscription to any place of amusement, including any service charge and any charge for entertainment or amusement or for the use of facilities therefor.

* * *

(2) Dramatic or musical arts admission charge. Any admission charge to a theater, opera house, concert hall or other hall or place of assembly for a *live dramatic, choreographic or musical performance*. (Emphasis added)

(3) Place of amusement. Any place where any facilities for entertainment, amusement, or sports are provided. Such places include without limitation

(i) a theatre of any kind, concert hall, opera house, or other place where a performance is given;

(ii) fairground or exhibition hall or grounds;

(iii) golf course, athletic field, sporting arena, gymnasium, bowling alley, shooting gallery, swimming pool, bathing beach, skating rink, tennis court, handball court, billiard hall or other place for athletic exhibits. . . .

* * *

(d) Admissions excluded from tax.

* * *

(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 performances.* (Emphasis added)

* * *

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

Opinion

Petitioner offers to the public regularly scheduled tours and lectures about local mining, history, gemology, geology and present-day operations of a garnet mine. The content of the lectures and their delivery are closely scripted. Petitioner does not charge admission to enter the general premises, but does charge for the lectures performed by trained employees. Petitioner's advertisements refer to "Garnet Mine Tours," and indicate that the tour includes a rock exhibit, garnet collection and mine history and geology lecture. The advertisement also provides a one dollar discount off the admission charge. Based on these facts, it appears that Petitioner charges patrons for admission to a tour of the garnet mine, which includes a lecture.

Petitioner's mine tours meet the definition of a place of amusement. See section 1101(d)(10) of the Tax Law. In *Fort William Henry Corp. v State Tax Commission*, 52 AD2d 664, 381 NYS2d 907, the court stated that "The status of this facility as a provider of amusement or entertainment, as those terms are commonly understood, is certainly not weakened merely because the matters presented may also be of historic and educational significance." Therefore, Petitioner's charges for mine tours and lectures are admission charges to or for the use of a place of amusement, although the content of the lectures is historical and educational.

Admission charges for dramatic or musical performances are exempt from sales tax, but Petitioner's mine tours and lectures cannot be considered to be live dramatic performances. For purposes of section 1105(f)(1) of the Tax Law, dramatic or musical performances do not include variety shows, magic shows, circuses, or similar performances. See section 527.10(d)(2) of the Sales and Use Tax Regulations. Clearly, not all live performances qualify for the exemption provided by section 1105(f)(1) of the Tax Law. In the present case, Petitioner's mine tours and

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lectures are not in the nature of a dramatic performance. Therefore, Petitioner's charges for admission to the mine tours and lectures are subject to sales tax under section 1105(f)(1).

DATED: November 18, 2003

/s/
Jonathan Pessen
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Technical Services Division

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