

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-09(53)S
Sales Tax
December 3, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S090916A

On September 16, 2009, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its receipts for providing child care at an indoor facility are subject to sales tax. Petitioner's receipts are not subject to sales tax.

Facts

Petitioner operates a drop-off care center for children ages two to eight, which is open seven days a week. Children dropped off may spend at maximum three hours at the center during a day. The facility contains a screening wall (8' X 10') that plays children movies non-stop. The facility also contains playground equipment, a child size rock climbing wall, and large jumping ball castle. Children have access to books, crafts, toys, and puzzles. Staff supervise group activities such as face painting and art projects.

All persons dropping off children at Petitioner's facility must provide contact information including a phone number. If the person dropping off the child does not have a phone, he or she will be given a cell phone by Petitioner. If someone other than the drop off person picks up the child, that person must present photo identification at the time of pick up. If the pick-up person has not been designated in writing as authorized to pick up the child, the person must also provide at the time of pick up the family code word.

Petitioner has a written discipline and behavior management policy as to the children in its care, which is available for review by its customers.

Petitioner charges based on the minutes it cares for a child. It also imposes a late fee if a child stays past closing time.

Analysis

Petitioner's receipts are not subject to sales tax. Petitioner has custody over and responsibility for the care of the children. It charges for providing a child care service similar to daycare and is not charging admission fees to a place of amusement. *Compare Playspace 92nd Street West, Inc.*, Adv Op Comm T&F, September 29, 1997, TSB-A-97(61)S; and *Taxability of Charges for Use of*

an Educational and Recreational Center, November 17, 2006, NYT-G-06(1)S, which did not involve child care facilities where children were dropped off.

DATED: December 3, 2009

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.