

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

TSB-A-14(32)S
Sales Tax
August 26, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140314A

The Department of Taxation and Finance received a Petition for Advisory Opinion from



Petitioner asks whether a certificate of authority is required to run his coin-operated game room. We conclude that Petitioner is not required to obtain a certificate of authority in order to run his business.

Facts

Petitioner operates a small game room, consisting of a pinball machine, jukebox and two billiard tables, all of which are coin-operated. Petitioner does not charge a fee to enter the establishment, nor does Petitioner sell any food, drink or other tangible personal property or services. The only form of payment Petitioner's business receives from its customers is from the use of the four coin-operated machines.

Analysis

Whether or not Petitioner's business must obtain a certificate of authority depends on whether the business is a "person required to collect sales tax."

Every person required to collect tax imposed by Article 28 of the Tax Law or pursuant to the authority of Article 29 of the Tax Law is required to obtain a certificate of authority. *See* Tax Law § 1134(a) and Sales Tax Regulation § 533.1(a). A certificate of authority empowers the registrant to collect the applicable sales and use taxes. Tax Law § 1134(a)(2).

Tax Law § 1131(1) provides that "every vendor of tangible personal property or services; every recipient of amusement charges; and every operator of a hotel" are persons required to collect tax imposed by Tax Law Article 28. A "recipient" of amusement charges is defined as "any person who collects or receives, or is under a duty to collect an amusement charge." The term "amusement charge" is defined as "[a]ny admission charge, dues or charge of roof garden, caberet or other similar place." An admission charge is defined as "the amount paid for admission, including any service charge, and any charge for entertainment or amusement or for the use of facilities therefor." Tax Law § 1101(d)(2), (3), and (11).

Receipts from the operation of coin-operated amusement devices, including coin-operated gaming devices that are provided for the enjoyment of patrons, are not subject to sales tax. See *Matter of Hospital Tel. Sys. Inc. v. New York State Tax Comm'n.*, 44 AD 2d 271 (3d Dep't 1974); *Bathrick Enterprises, Inc. v. Murphy*, 27 AD 2d 215 (3d Dep't 1967). The pinball machine, jukebox and two billiard tables in Petitioner's game room qualify as coin-operated amusement devices; therefore, the receipts from the operation of these devices are not subject to sales tax. Furthermore, because Petitioner does not charge admission to enter his game room, he is not a recipient of amusement charges. Because Petitioner's establishment does not sell any other property or services, he is not a "person required to collect tax" and is not required to obtain a certificate of authority in order to run his business.

DATED: August 26, 2014

/S/

DEBORAH R. LIEBMAN
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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.