

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

TSB-A-85(41)S
Sales Tax
September 9, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850719A

On June 20, 1985, a Petition for Advisory Opinion was received from "The Battery" 1520 Spencerport Road, Rochester, New York 14616.

The issue raised is whether Petitioner is required to collect sales tax on amounts charged to customers for the use on its premises of machines which propel softballs or baseballs for batting practice. The machines can be operated either by employees of Petitioner or by the customers.

Section 1105(f) of the Tax Law imposes taxes on: "(1) 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 to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools."

The definition of a "place of amusement" contained in Regulations Section 527.10(b)(3): "Any place where any facilities for entertainment, amusement or sports are provided" is descriptive of Petitioner's business operation.

Petitioner's customers engage in batting practice, a sport involving substantial physical exercise. Accordingly, Petitioner's charges to patrons for participation in sporting activities, and the use of facilities therefor, are not subject to tax as admissions under Section 1105(f)(1) of the Tax Law. (Matter of Green Meadow Stables, Decision of the State Tax Commission, Dec. 10, 1976, STH 77-17).

This exception also applies to any service charge that is part of the admission charge. Regulations Section 527.10(b)(1)(i) offers the following example:

Example 2: An admission charge includes 75¢ per ticket for parking whether the patron does or does not avail himself of the parking privilege. This charge is shown as a separate item on every ticket. The parking charge is considered a part of the admission charge whether it is separately stated or not. Consequently, if the admission is not taxable, neither is the service charge.

If Petitioner, in addition to the admission ticket, charges for the rental of equipment (i.e. bats or batting helmets) such receipts are subject to the sales tax. No tax is due on Petitioner's purchases of equipment used in such taxable rentals. To avail itself of this exemption Petitioner should present vendors with a properly completed Resale Certificate (Form ST-120).

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However, it is to be noted that no exemption is provided for Petitioner's purchases of the pitching machines and any related equipment or parts. Petitioner, as the end consumer, is liable for the applicable State and local sales or use taxes on the acquisition of such property.

DATED: August 19, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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