

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

TSB-A-85(46)S
Sales Tax
October 16, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850212A

On February 12, 1985 a Petition for Advisory Opinion was received from Scott B. Smith, President of Survival Games of the Great Northeast, Inc., 56 South Union Street, Cambridge, New York 12816.

The issue raised is whether the charge for admission to play what is known as a "survival game" is subject to sales tax.

Survival games are generally played on a playing field with two or more parties engaged in a shooting match using CO₂ fired weapons that shoot paint. While not so stated in the Petition, it is presumed that this is the type of survival game which is the subject of Petitioner's inquiry.

Petitioner states that a single charge is imposed on the participant for admission and rental of equipment and there are no other additional charges. The winner of each game receives a free "Survival Games of the Great Northeast, Inc." t-shirt.

Section 1105(a) of the Tax Law imposes a sales tax on the receipts from every retail sale of tangible personal property, except as otherwise excluded or exempted.

Section 1101(b)(5) of the Tax Law defines "sales" as any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise in any manner or by any means whatsoever for a consideration.

Section 1105(f)(1) of the Tax Law imposes a sales tax on any admission charge 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.

Section 1132(c) of the Tax Law provides that all amusement charges of any type mentioned in section 1105(f) are subject to tax until the contrary is established and that the burden of proving that any amusement charge is not taxable is on the person required to collect tax.

Regulation section 527.10(c)(4) illustrates the applicability of section 1105(f)(1) of the Tax Law with the following examples:

Example 6: Admission charges for the use of bowling lanes and swimming pools are not subject to tax. However, any charge for the use of tangible personal property in conjunction with the sporting activity is taxable. Included as taxable would be bowling shoes, towel and locker rentals.

TSB-A-85(46)S
Sales Tax
October 16, 1985

Example 7: A ski resort's charge for lift tickets is an exempt admission charge to a sporting facility in which the patron will be a participant. If the facility charges for the use of skis or other equipment, such charge is for the rental of tangible personal property which is subject to tax. (20 NYCRR 527.10).

Accordingly, the admission charge for participating in the survival game is not subject to tax since the patron is a participant.

Petitioner's provision of equipment (pistol, holster, goggles, paint and CO₂) necessary to play the game is analogous to bowling alleys' providing bowling balls and miniature golf courses' providing putters and golf balls. In each of these cases the charge to the patron is the same whether or not the participant uses the equipment (e.g. a bowler using his own ball instead of a house ball). The use of the equipment is part of the admission. In providing equipment in this manner, Petitioner is not selling tangible personal property within the meaning of section 1105(a) of the Tax Law. (20 NYCRR 527.10(b)(1)(i)). Accordingly, Petitioner is required to pay sales tax on such purchases.

Where Petitioner charges a fee (in a transaction separate and distinct from the admission) for the use of additional paint or CO₂ cartridges, such a transaction constitutes a taxable sale of tangible personal property pursuant to section 1105(a) of the Tax Law. Accordingly, Petitioner may purchase such paint and CO₂ cartridges without tax by giving its supplier a properly completed resale certificate (Form ST-120). (20 NYCRR 532.4(d)). In the event Petitioner purchases paint or CO₂ cartridges using a resale certificate, Petitioner must maintain records adequate to verify the sales and use tax status of such purchases. (20 NYCRR 533.2). Paint and CO₂ cartridges purchased tax exempt with a resale certificate and which is supplied to the patron as part of the admission, must be reported as a purchase subject to use tax. (20 NYCRR 532.4(d)(3)).

Inasmuch as the t-shirts are given to the winning participant without charge there is no sales tax due on such transfer. The person giving away the t-shirt (viz. Survival Games of the Great Northeast Inc.) would, however, be required to pay sales tax on its purchase of the t-shirts. (20 NYCRR 526.6(c)(4)).

DATED: September 18, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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