

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

TSB-A-82(21)S
Sales Tax
June 7, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. Z820510A

On May 10, 1982 a Petition for Advisory Opinion was received from the Sullivan County Harness Racing Association, Inc., Route 17B, Monticello, New York 12701.

Petitioner proposes to sell tickets entitling the purchaser to admission to the day's regular racing card and, in addition, to admission to a closed circuit T.V. presentation of a boxing match taking place outside of New York. The normal admission fee charged by Petitioner for admission to a harness horse race meeting is \$2.50, including tax. The admission fee to be charged under the circumstances described above will be \$15.00. Where a patron chooses to leave the premises after the conclusion of the days's races and prior to the closed circuit T.V. presentation, he will be given a refund in the amount of \$12.50.

Section 39-a.1 of Chapter 254 of the Laws of 1940, the Pari-Mutuel Revenue Law, imposes an admission tax, as follows:

Every corporation, association or person holding a harness horse race meeting pursuant to this act shall collect in addition to the admission price of tickets sold or otherwise disposed of, for each such meeting held by such corporation, association or person, a tax equivalent to four per centum of each such admission price; which tax is hereby imposed.

Section 1105(f)(1) of the Tax Law imposes a 4% sales tax on the following admission charges:

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 race tracks, boxing, sparring or wrestling matches or exhibitions which charges are taxed under any other law of this state

Sullivan County imposes a similar tax, at the rate of 3%.

Under the facts presented, Petitioner will in effect be collecting two separately stated admission charges. One will be a charge for admission to the racing event, amounting to \$2.50, inclusive of the 4% admission tax imposed under the Pari-Mutuel Revenue Law. The additional amount charged will constitute an admission charge for the closed circuit T.V. presentation and such charge will be subject to the state and local sales taxes described above. The amount so charged for the boxing event may include the sales taxes if the purchaser is advised of the taxes being collected. Section 532.1(b) of the Sales and Use Tax Regulations provides for such statement, as follows:

(b) Statement of and reference to tax.

(1) Whenever the customer is given any sales slip, invoice, receipt, or other statement or memorandum of the price, amusement charge, or rent paid or payable, the tax shall be stated, charged and shown separately on the first of such documents given to him.

. . .

(3) The words "tax included" or words of similar import, on a sales slip or other document does not constitute a separate statement of the tax, and the entire amount charged is deemed the sales price of the property sold or services rendered.

(4) No written receipt. For sales other than sales of gasoline and diesel fuel a "unit price" method of accounting for sales may be used where no written receipt is given to the customer. The "unit price" is the price, including sales tax, at which the sale is recorded. Since the customer must be made aware of the inclusion of sales tax in the total sales price, every business establishment employing the "unit price" method must visibly display, to all customers a placard stating that the prices of all taxable items include sales tax. If the sale is recorded on a cash register it may be rung up on a single ring, a quantity of individual items may be run up in total, or a quantity of items can be rung up individually with a total. (emphasis added)

Petitioner has also indicated that in the event a customer were to seek admission to the closed circuit T.V. presentation alone, the admission charge collected would be \$15.00. In such event the full admission charge would be subject to the tax imposed under section 1105(f)(1) of the Tax Law, as well as the Sullivan County tax. Petitioner has indicated that it is considering the granting of a refund to a customer attending the TV presentation alone. Such refund would consist of either \$2.50 in cash or a pass to a future horse race meeting, such pass having the value of \$2.50, inclusive of tax. Where there is such a cash refund the customer would be purchasing an admission to the T.V. presentation, at \$12.50, and such purchase would be subject to the State and local sales taxes on admissions. Where the customer is given a pass the taxes due would be the same as those applicable to the occasion where a customer pays the \$15.00 admission fee to attend both the races and the TV presentation on the same day.

Petitioner has also indicated that it plans to arrange another such joint presentation, with an overall admission charge of \$5.00. The principles set forth herein above would be equally applicable to such arrangement.

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It is to be noted that Petitioner's contention to the effect that in each case the amount charged in excess of \$2.50 represents a recovery of Petitioner's costs compels no conclusion contrary to that expressed herein.

DATED: May 20, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau