

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

TSB-A-84(13)S
Sales Tax
April 9, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S831206B

On December 8, 1983 a Petition for Advisory Opinion was received from Junior Achievement of Western New York, Inc., 495 Pearl Street, Buffalo, New York 14202.

The issue raised is whether sales tax must be collected on sales made by "JA Companies" (a program of the Petitioner.)

Petitioner is a non-profit corporation affiliated with Junior Achievement, Inc., a national organization. Petitioner provides young people with business and economic experience through various programs. One such program, "JA Companies," involves students in the operations of their own small businesses. Each "company" is comprised of approximately 15 to 20 students who elect officers, sell "stock" (although the company is not actually incorporated), manufacture products and market such products, or market services. Sales are conducted on a casual door-to-door basis throughout the school term. The students involved in the program are issued membership cards by Petitioner, make tax-free purchases through the use of Petitioner's vendor identification number, and issue receipts to customers which indicate that the payments for property or services go to Petitioner. It is clear, thus, that the activities of the students in making sales constitute activities of the Petitioner.

Section 1116(a) of the Tax Law provides that sales by organizations described therein shall not be subject to the sales or compensating use tax. This exemption is applicable to Petitioner, which satisfies the criteria set forth in Tax Law, §1116(a)(4). However, such exemption is not applicable to (1) sales made by such an organization when made by a shop or store operated by such organization, (2) sales of food or drink in or by a restaurant, tavern or other establishment operated by such organization and (3) sales (in the City of New York) of the service of parking, garaging and storing motor vehicles provided by such organization operating a garage (other than one which is part of premises occupied solely as a private one or two family dwelling), parking lot or similar place of business. Tax Law, §1116(b).

Section 529.7(i)(2) of the Sales and Use Tax Regulations defines the term "shop or store" as "any place or establishment where goods are sold from display with a degree of regularity, frequency and continuity as well as any place where sales are made through a temporary shop or store located on the same premises as persons required to collect tax." 20 NYCRR 529.7(i)(2)

Section 529.7(i)(3) of the Sales and Use Tax Regulations defines the terms "restaurant, tavern or other establishment" as including "any dining room, bar and barroom, or concession stand operated with a degree of regularity, frequency and continuity as well as any place where sales are made through a temporary restaurant, tavern, or other establishment located on the same premises as persons required to collect tax. It is immaterial whether or not the restaurant, tavern or other

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establishment is located on the premises of the exempt organization or whether or not the use of such facilities is restricted to the members of the organization." 20 NYCRR 529.7(i)(3).

Accordingly, the sales of tangible personal property described by Petitioner, where made on a door-to-door basis, would not be subject to tax. Sales made under circumstances described in Tax Law, §1116(b), summarized above, would be subject to tax. It is to be noted that sales of services by an exempt organization such as Petitioner, other than the parking, garaging and storing services described in Tax Law, §1116(b)(3), would in all events be exempt from tax.

DATED: March 20, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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