

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

TSB-A-86(14)S
Sales Tax
March 24, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S851029B

On October 29, 1985, a Petition for Advisory Opinion was received from the West Seneca Lions, 22 Freedom Drive, West Seneca, New York 14224.

The issue raised is whether the West Seneca Lions are required to collect sales tax on certain sales made by them.

Petitioner states that on August 1, 1985, it began to distribute candy mints for sale in various locations throughout West Seneca. The proceeds from such sales will be deposited in the club's "Project Fund" which is used entirely to help the blind, disabled and needy in West Seneca.

Section 1116(a)(4) of the Tax Law exempts from the sales and use taxes, "any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes"

If an organization qualifies as an exempt organization pursuant to the provisions of section 1116(a)(4) of the Tax Law, it is not required to collect sales tax on its sales unless such sales are made by a shop, store or restaurant operated by such exempt organization. Petitioner does not qualify as an exempt organization under section 1116(a)(4) of the Tax Law even though it is operated on a nonprofit basis. An organization is not exempt from tax under section 1116(a)(4) merely because it is operated as a nonprofit organization. 20 NYCRR 529.7(a)(2).

Accordingly, Petitioner is required to collect sales tax on its sales of tangible personal property, including candy mints. (see: Tax Law section 1115 (a)(1)).

However, an organization that is exempt from Federal income taxes but does not qualify for exemption from sales tax under paragraphs (4), (5) or (6) of Section 1116(a) of the Tax Law, may establish a separate entity exclusively for religious, charitable, scientific, literary, or educational purposes. If such separate entity meets the organizational and operational requirements of regulation

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section 529.7 and if its application for exemption is approved by the Technical Services Bureau as provided in regulation section 529.7(f), then its sales, other than sales by a shop, store or restaurant operated by the separate entity, will be exempt from sales tax.

DATED: March 24, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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