

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

TSB-A-88 (43)S  
Sales Tax  
August 31, 1988

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880712A

On July 12, 1988, a Petition for Advisory Opinion was received from the Richard Wagner Society of NY, Inc., c/o William C. Miller, Miller, Blackeney and Divack, 108 East 38th Street, Suite 1208, New York, New York 10016.

The issue raised is whether a temporary sales table constitutes a shop or store from which sales would be subject to tax pursuant to section 1105(a) of the Tax Law.

Petitioner is an exempt organization as described in section 501(c)(3) of the Internal Revenue Code and in section 1116(a)(4) of the Tax Law. Its activities consist of meetings for members of Petitioner and other interested people during which knowledgeable lecturers and singers are heard. The meetings have been held only in New York City. In addition, Petitioner offers for sale to its members, and others, various books, records, etc. The items offered for sale substantially relate to Richard Wagner, his life, and his music. Many of the items are difficult to obtain or cannot be obtained from local retail sources. Sales are made primarily by mail. At some meetings, which are held at various locations as Petitioner does not have a permanent location other than a post office box, the items are offered for sale to those attending. At those meetings, a temporary table is used to display the items offered for sale. New York State and local sales taxes have been collected on sales made in or delivered to New York State locations.

Section 1105(a) imposes sales tax on "the receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1116(a) of the Tax Law states, in part, that:

Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article: ... (4) 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 ... .

Section 1116(b)(1) of the Tax Law states that "[n]othing in this section shall exempt retail sales of tangible personal property by any shop or store operated by an organization described in paragraph (4) ... of this section."

Sales and Use Tax Regulation 529.7(i)(2) provides that "[a] 'shop or store' ... includes 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).

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Petitioner holds meetings at various locations throughout New York City. Because Petitioner has a different location for each of its meetings, a temporary table set up at some of these meetings does not constitute a shop or store since it fails to occur with regularity, frequency and continuity within the meaning and intent of section 529.7(i)(2) of the Sales and Use Tax Regulations.

Accordingly, Petitioner is not required to collect New York State and local sales taxes on receipts from sales at its temporary sales table as long as the temporary sales table is not located on the same premises as persons required to collect tax.

DATED: August 31, 1988

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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