

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

TSB-A-92 (22)S
Sales Tax
March 16, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911217B

On December 17, 1991 a Petition for Advisory Opinion was received from Western New York Venture Association, Inc., 424 Main Street, Suite 1133, Buffalo, New York 14202.

The issues raised by Petitioner, Western New York Venture Association, Inc., are:

- 1.) Whether Petitioner qualifies as an entity exempt from the imposition of sales tax under the provisions of Section 1116 of the Tax Law.
- 2.) Whether Petitioner is liable for collecting sales tax on the receipts from dues charged to members and sponsors.
- 3.) Whether Petitioner is liable for paying sales tax on charges to Petitioner for meeting room rentals.

Petitioner is a not-for-profit corporation organized under Section 402 of the New York Not-For-Profit Corporation Law. For internal revenue purposes it is an exempt organization pursuant to Section 501(c)(6) of the Internal Revenue Code. Petitioner's sole purpose is to encourage and stimulate capital formation in Western New York. Petitioner conducts monthly meetings for its membership during which approximately three presenters discuss a business opportunity for which they are trying to raise capital. The formal segment of the meeting lasts approximately one hour. The meetings are organized by the Board of Directors and one of the officers serves as Master of Ceremonies for the meeting. The meetings are held at the offices of the Western New York Chamber of Commerce.

Petitioner's Certificate of Incorporation states, in part, as follows:

2. Nonprofit purpose. The Corporation is formed exclusively for purposes for which a corporation may be formed under the Not-For-Profit Corporation Law and not for pecuniary profit or financial gain. No part of the assets, income, or profit of the Corporation shall be distributable to, or inure to the benefit of its members, directors, or officers except to the extent permitted under the Not-For-Profit Corporation Law.

...

4. Purposes. The general purpose of this corporation shall be to encourage the development and growth of venture capital activities including:

- (a) Providing the means for members to exchange experience and opinions through discussions and studies of all the aspects and functions of venture capital and its management and the development of growth oriented businesses.

(b) To encourage economic development in Western New York by providing a forum at which owners of existing businesses may meet with potential investors. The Corporation shall have no interest in any such business or investment and shall not receive remuneration or profit therefrom.

...

Petitioner's By-Laws states, in part, as follows:

Article 1

Purposes

1.01 The general purposes of this corporation shall be to encourage the development and growth of venture capital activities, including:

(a.) Providing the means for members to exchange experience and opinions through discussions and studies of all the aspects and functions of venture capital and its management and the development of growth oriented businesses. . . .

Petitioner's sole source of revenue is annual dues collected from individual members and corporate sponsors. Petitioner's expenses consist of meeting room rentals and purchase of various supplies. No wages are paid nor does any benefit inure to any member or sponsor. Upon dissolution, all remaining assets will be distributed to a scientific educational, or charitable organization qualifying under Section 501(c)(6) or 501(c)(3) of the Internal Revenue Code.

Section 501 of the Internal Revenue Code states, in part, as follows:

(a) Exemption From Taxation.--An organization described in subsection (c). . . shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(c) List of Exempt Organizations.--The following organizations are referred to in subsection (a):

(6) Business leagues, chambers of commerce, . . . boards of trade, . . . not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1116 of the Tax Law states, in part, as follows:

Exempt organizations.-- (a) 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. . .no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation. . ., and which does not participate in, or intervene in. . .any political campaign on behalf of any candidate for public office;

Section 1105 of the Tax Law states, in part, as follows:

Imposition of sales tax.--. .there is hereby imposed and there shall be paid a tax of four percent upon:

(e) The rent for every occupancy of a room or rooms in a hotel. .

(f)(2) The dues paid to any social or athletic club. . .

Section 527.9 of the Sales and Use Tax Regulations states, in part, as follows:

Hotel occupancy. [Tax Law, 1105(e)] (a) Imposition. A sales tax is imposed on every occupancy of any room or rooms in a hotel, motel or similar establishment. . .

(b) Definitions. As used in this section, the following terms shall mean:

(5) Room. Any room or rooms of any kind in any part or portion of a hotel, which is available or let out for any purpose other than as a place of assembly. . . .

(6) Place of assembly. A room or suite of rooms containing no sleeping accommodations and intended to be occupied and used by persons for purposes other than as sleeping and living quarters such as education, recreation, amusement or business or religious meetings. . . .

(e) Nontaxable occupancy. The following occupancies are not subject to tax on hotel occupancy:

(1) a room or suite of rooms containing no sleeping facilities and used solely as a place of assembly (see paragraph [b][6] of this section);. . .

Section 527.11 of the Sales and Use Tax Regulations states, in part, as follows:

Dues. [Tax Law, §1105(f)(2)]

(b) Definitions. As used in this section, the following terms shall mean:

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(6) Social club. A social club is any club or organization which has a material purpose or activity of arranging periodic dances, dinners, meetings or other functions affording its members an opportunity of congregating for social interrelationship. .

..

(7) Athletic club. (1) An athletic club is any club or organization which has as a material purpose or activity the practice, participation in or promotion of any sports or athletics. . . .

Although Petitioner, Western New York Venture Association, Inc. may qualify as an exempt organization under Section 501(c)(6) of the Internal Revenue Code, this does not mean that Petitioner qualifies as an exempt organization as defined in Section 1116(a)(4) of the Tax Law.

To the contrary, Petitioner's general purposes as stated in Petitioner's Certificate of Incorporation and in its By-Laws indicates that the corporation was not organized and operated exclusively for any of the purposes enumerated in Section 1116(a)(4) of the Tax Law. Accordingly, Petitioner does not qualify for the exemption provided under Section 1116(a)(4) of the Tax Law.

Because Petitioner is not considered to be a social or athletic club, as described under Section 527.11 of the Sales and Use Tax Regulations, receipts from its annual charges to members and sponsors will not be subject to the sales tax imposed under Section 1105(f)(2) of the Tax Law.

Furthermore, since Petitioner rents rooms as meeting places, Petitioner is considered to be occupying such rooms for purposes of a place of assembly. Accordingly, under the provisions of Section 527.9(e) of the Sales and Use Tax Regulations Petitioner is not subject to sales tax on the rental charges for the room, even though such room may be located on the premises of a hotel, motel or similar establishment.

DATED: March 16, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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