

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

TSB-A-84(8)S
Sales Tax
March 8, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830509A

On May 9, 1983 a Petition for Advisory Opinion was received from Jody Ann Michelman, 294 Parkdale, Buffalo, N.Y. 14213.

Petitioner request a clarification of section 1105(d)(ii)(B) of the Tax Law, concerning the applicability of the sales tax to student meal plans.

Section 1105(d) of the Tax Law imposes a tax on the receipts from the sale of food or drink sold in or by restaurants, taverns or other establishments in this state. The statute, however, excludes from tax receipts from such sales where made "at a restaurant, tavern or other establishment located on the premises of a college, university or a school (other than a nursery school, kindergarten, elementary or secondary school) to a student enrolled therein who purchases such food or drink under a contractual arrangement whereby the student does not pay cash at the time he is served "Tax Law § 1105(d)(ii)(B). Such educational institutions must be operated by an exempt organization or with the sanction of the State of New York. 20 NYCRR 527.8(h)(3).

Petitioner describes a university meal plan under which a photo-identification meal card is purchased for \$425, the student's right to receive food and drink being represented as "points" on the card. These points can then be "spent" for food and drink at any of certain food establishments on campus. Where at the end of the academic year a student has used less than all of his or her points no refund is issued. Petitioner asks whether her meal plan would lose its exclusion from sales tax under section 1105(d)(ii)(B) of the Tax Law if it was modified to provide for such refunds. It is concluded herein that such a modification would result in a loss of the exclusion, and that tax would be due on the amount paid.

The exclusion provided under the statute does not apply where meals are paid for in cash. It also would not apply where meals are paid for in scrip. 20 NYCRR 527.8(h)(3) ex. 3. If a contract provided for refunds in the manner described by Petitioner, the points would be equivalent to scrip. Therefore, if the meal plan contract at Petitioner's university were modified to provide for such refunds, it would no longer qualify for the exclusion and tax would be due on the amount paid. The same conclusion would be reached if the contract provided for refunds conditioned on the payment of sales tax on the points used, because this would be sufficiently close to the use of scrip as to avoid the purposes of the statute. Finally, it is to be noted that if a plan provided for refunds where a

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student withdraws from school prior to the end of the term of the contract, the refund being measured solely by the amount of time remaining under the contract, such plan would be exempt, because the refund would not necessarily be related to the amount of food and drink consumed.

DATED: February 21, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau