

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

TSB-A-85(44)S
Sales Tax
October 16, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850301A

On March 1, 1985 a Petition for Advisory Opinion was received from the Jamestown Campus of the Jamestown Community College Faculty-Student Association, 525 Falconer Street, Jamestown, New York 14701.

The issue raised is whether Petitioner is required to collect sales tax on admission charges collected from various activities held to raise funds for its organization.

The Jamestown Community College Faculty Student Association, hereinafter "JCC-FSA", is an exempt organization pursuant to Internal Revenue Code section 501(c)(3). It is an entity organized and operated exclusively for educational purposes. JCC-FSA collects admissions to theatrical events, athletic events, recreational activities, dances and other social events. The gross proceeds of the activities inure to the benefit of JCC-FSA.

Section 1105(f)(1) of the Tax Law imposes a tax on "Any admission charge where such charge is in excess of ten cents to or for the use of any place of amusement in the state except for charges for admission to race tracks . . . or dramatic or musical arts performances or motion picture theaters...."

Section 1116(a) exempts from sales and use tax any sale or amusement charge by or to any of the following or any use or occupancy by any of the following:

"(4) Any corporation, association . . . 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...."

Section 1116(a)(4) was modeled after section 501(c)(3) of the Internal Revenue Code and contains identical wording. Although section 501(c) of the Internal Revenue Code contains twenty-two paragraphs which provide income tax exemptions to different types of organizations, only those organizations which meet the requirements of paragraph three of section 501(c) qualify for sales tax exemption pursuant to section 1116(a)(4) of the Tax Law. New York State Grange Patron of Husbandry, State Tax Commission Advisory Opinion, November 27, 1981, TSB-A-81(55)S. Inasmuch as Petitioner has exempt organization status under Internal Revenue Code section 501(c)(3), it is presumed, for purposes of this Advisory Opinion only, that Petitioner meets the requirements for exempt organization status under section 1116(a)(4) of the Sales and Use Tax Law.

Section 1116(d)(1) of the Tax Law provides that ". . . any admissions all of the proceeds of which inure exclusively to the benefit of the following organizations shall not be subject to any of the taxes imposed under subdivision (f) of section 1105: (A) an organization described in paragraph (4), (5) or (6) of subdivision (a) of this section. . . ."

An exception to the exemption provided for in section 1116(d)(1) of the Tax Law is contained in section 1116(d)(2) of the Tax Law and states as follows:

(2) The exemption provided under paragraph (1) of this subdivision shall not apply in the case of admissions to:

(A) Any athletic game or exhibition unless the proceeds shall inure exclusively to the benefit of elementary or secondary schools or unless in the case of an athletic game between two elementary or secondary schools, the entire gross proceeds from such game shall inure to the benefit of one or more organizations described in paragraph (4) of subdivision (a) of this section;

(B) Carnivals, rodeos, or circuses in which any professional performer or operator participates for compensation, unless the entire net profit from such carnival, rodeo or circus shall inure exclusively to the benefit of an organization described in paragraph four of subdivision (a) of this section, and such organization shall have as its charitable or educational purpose the operation of a school and of such a carnival, rodeo or circus. . . .

Accordingly, the admissions collected by the JCC-FSA from its theatrical events is exempt from sales tax pursuant to section 1105(f)(1) of the Tax Law to the extent that such admissions are for dramatic or musical arts performances. The admissions collected from theatrical events other than dramatic or musical arts performances, the recreational activities, dances and other social events are exempt from sales tax to the extent provided for in section 1116(d)(1) and (2) of the Tax Law. The admissions collected by the JCC-FSA from its athletic events are taxable unless the athletic event falls within the exception set out in section 1116(d)(2)(A) of the Tax Law. It should be noted that Petitioner must establish its exempt status with the Technical Services Bureau in order to qualify for the exemptions set forth in section 1116 of the Tax Law. (20 NYCRR 529.1[b]).

DATED: September 16, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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