

Volunteer Fire Companies

An Opinion of Counsel, Peter Crotty, dated January 23, 1978, concerning the exemption from sales and use taxes with respect to volunteer fire companies or corporations, clarifies the Opinion of Counsel, Edward H. Best, dated October 5, 1965.

The 1965 opinion stated, "Where a volunteer fire company or corporation charges admission to a place of amusement, such admission charge is not subject to tax where all of the proceeds from the admission charge exclusively inure to the benefit of the volunteer fire company or corporation (Tax Law, section 1116(d) (1)(A) and (D)). Retail sales of tangible personal property by such volunteer fire companies or corporations are exempt except where made through a shop or store operated by such a company or corporation (Tax Law, section 1116(b)).

Some volunteer fire companies interpreted the 1965 opinion as rendering them exempt from charging sales tax on admission to non-fire company events in which they participated. When this was found to be untrue, questions arose as to exactly what exemptions they were entitled to.

The new opinion is intended to clarify any misunderstanding in this area and it must be stressed that the interpretations reflected in this opinion apply exclusively to Volunteer Fire Companies and must not be construed as applicable to any other organizations.

Reproduced below, for the guidance of all persons, is the new opinion.

January 23, 1978

Crotty, Counsel.--My opinion has been requested as to whether volunteer fire companies or corporations are exempt from the New York State and local sales and use tax imposed by or under the authority of Articles 28 and 29 of the Tax Law.

Section 1116(a)(4) defines an exempt organization, in part, as follows:

"Any corporation, association . . . organized and operated exclusively for . . . charitable . . . 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 (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;

Section 3, subdivision 2 of the Volunteer Firemen's Benefit Law defines a volunteer fire company as follows:

"2. 'Fire company' means:

"a. A fire company of a county, city, town, village or fire district fire department, whether or not any such company has been incorporated under any general or special law,

"b. A fire corporation incorporated under or subject to the provisions of article ten of the membership corporations law, which is not included within paragraph a above, if such corporation is by law under the general control of, or recognized as a fire corporation by, the governing board of a city, town, village or fire district, or

"c. A fire corporation incorporated under, or established pursuant to the provisions of, any general or special law, which is not included within paragraphs a and b above, if such corporation is by law under the general control of, or recognized as a fire corporation by, the governing board of a city, town, village or fire district or Indian reservation."

The members of a volunteer fire company or corporation contribute their services voluntarily to the community without compensation. No part of the net earnings of such companies or corporations inures to the benefit of any private shareholder or individual. No substantial part of the activities of such companies or corporations is carrying on propaganda or otherwise attempting to influence legislation. They do not participate in or intervene in any political campaign on behalf of any candidate for public office. Accordingly, the allowance of an exemption depends on whether volunteer fire companies or corporations are organized and operated exclusively for charitable purposes.

The Tax Court has held that contributions to volunteer fire companies or corporations are deductible for Federal income tax purposes as contributions to a charity (Sheldon v. Commissioner, 6 T.C. 510; Knight v. Commissioner, 9 T.C.M. 455; Smith v. Commissioner, 8 T.C.M. 1088).

In light of the purposes and activities of volunteer fire companies or corporations and the decisions cited above, in my opinion, volunteer fire companies or corporations as defined in section 3, subdivision 2 of the Volunteer Firemen's Benefit Law are organized and operated exclusively for charitable purposes. Since they are so organized and operated and meet the other requirements of section 1116 (a)(4), in my opinion, they are exempt organizations within the meaning of that provision.

As an exempt organization, a volunteer fire company or corporation is exempt from the New York State and local sales and use tax upon its purchases of tangible personal property and services as well as upon hotel rents and amusement charges properly paid by it. However, such organization must claim exemption by filing an Exempt Organization Certificate, Form ST-119-2, with the Sales Tax Bureau in accordance with the instructions on that form. Once the volunteer fire company or corporation has been determined to be an exempt organization, it must then furnish Form ST-119-1 to its vendors to make purchases tax free. Copies of these forms may be obtained from the Sales Tax Bureau in Albany or from any of the Department's district tax offices.

Where a volunteer fire company or corporation charges admission to a place of amusement, such as a fireman's field day, such admission charge is not subject to tax where all of the proceeds from the admission charge exclusively inure to the benefit of the volunteer fire company or corporation (Tax Law, section 1116 (d)(1)(A) and (D)). This exemption extends to the sale by a volunteer fire company or corporation of tangible personal property and food and drink at booths which are operated on the grounds of a fireman's field day, carnival, competition or such other event conducted under the auspices of the volunteer fire company or corporation, all of the proceeds of which exclusively inure to the benefit of the volunteer fire company or corporation conducting the event.

Retail sales of tangible personal property by volunteer fire companies or corporations are exempt except where made through a shop or store operated by such a company or corporation (Tax Law, section 1116(b)(1)), and except for sales of food or drink in or by a restaurant, tavern or other establishment operated by such a company or corporation where such sales are made other than at a fireman's field day or other event which is operated exclusively for the benefit of a volunteer fireman's organization. (Tax Law, section 1116(b)(2)).

This opinion only relates to the sales and use tax provided for in Articles 28 and 29 of the Tax Law.