

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

TSB-A-81(49)S  
Sales Tax  
November 17, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810513A

On May 13, 1981 a Petition for Advisory Opinion was received from Potsdam Auxiliary and College Educational Services, Inc., State University College at Potsdam, Potsdam, New York 13676.

The issue raised is whether sales tax is due on receipts from the sale of food and drink to a student of a nursery school, kindergarten, elementary or secondary school at a cafeteria located on the premises of such a school.

Petitioner operates the auxiliary services at the State University College of Arts and Science at Potsdam. These include food service, college store and vending. Included in the college program is the Campus Learning Center which maintains a nursery, kindergarten, elementary and secondary program. Petitioner supplies a daily lunch program in the Campus Learning Center.

Section 1105(d)(ii) of the Tax Law states, in part, "The tax imposed by this subdivision shall not apply to: . . . (B) food or drink sold to a student of a nursery school, kindergarten, elementary or secondary school at a restaurant or cafeteria located on the premises of such a school . . . provided the school . . . described in this paragraph is operated by an exempt organization described in subdivision (a) of section eleven hundred sixteen, or is created, incorporated, registered or licensed by the state legislature or pursuant to the education law or the regulations of the commissioner of education, or is incorporated by the regents of the university of the State of New York or with their consent or the consent of the commissioner of education as provided in section two hundred sixteen of the education law; . . ."

The State University College at Potsdam, which operates the Campus Learning Center, is an organization described in section 1116(a) of the Tax Law. Therefore, Petitioner's sales of food and drink to students of the Campus Learning Center on the premises of such school are excluded from sales tax pursuant to section 1105(d)(ii).

DATED: October 29, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau