

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

TSB-A-81(56)S
Sales Tax
November 27, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810929A

On September 29, 1981, a Petition for Advisory Opinion was received from Rochester Philharmonic Orchestra, Inc., 20 Grove Place, Rochester, New York 14605.

The issue raised is whether a temporary sales table constitutes a shop or store from which sales would be subject to sales tax.

The Rochester Philharmonic Orchestra, Inc. is a corporation exempt from federal income taxation under section 501(a) of the internal Revenue Code as an organization described in section 501(c)(3). The organization has not applied for nor received exemption from New York State sales tax. The corporation's principal activity is the presentation of concerts and other cultural performances by the Rochester Philharmonic Orchestra, a major symphony orchestra of international reputation, and other groups. In an effort to raise funds for the benefit of the Orchestra, volunteers have compiled a cookbook to be offered for sale. The corporation will conduct sales of the cookbook from a temporary sales table set up twice weekly during the fifteen weeks of the Orchestra's performing season. Those staffing the temporary sales table will be volunteers receiving no compensation for their efforts.

Section 1116(a) of the Tax Law states:

"Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy 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, . . . or educational purposes, . . ."

Section 1116(b) of the Tax Law provides:

"Nothing in this section shall exempt (1) retail sales of tangible personal property by any shop or store operated by an organization described in paragraph (4), . . . of subdivision (a) of this section, . . ."

The term "shop or store" is construed to be any place where goods are sold from a display with a degree of regularity and continuity.

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A temporary sales table set up twice weekly for a fifteen week period from which tangible personal property is offered for sale by an organization which has qualified for exemption pursuant to section 1116(a)(4) of the Tax Law constitutes a shop or store within the meaning and intent of section 1116(b) and the proceeds from such sales are subject to sales tax.

All sales of tangible personal property by non-qualifying organizations are subject to sales tax, regardless of the sales method used.

Accordingly, Petitioner is required to collect New York State and local sales tax on receipts from the sale of cookbooks at the temporary sales table.

DATED: November 10, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau