

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

TSB-A-82(29)S
Sales Tax
August 25, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811123A

On November 23, 1981 a Petition for Advisory Opinion was received from National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203.

The issue raised is whether sales tax is due on sales of gas or gas service to individual members of the Seneca Nation residing on the Cattaraugus and Allegany Reservations. It is concluded herein that it is not.

In accordance with the United States Supreme Court decisions in Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134 and Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463, an Indian who resides on his or her reservation in New York is not liable for New York state and local sales taxes on sales of tangible personal property delivered to the reservation, or sales of services where the services are delivered on the reservation. An Indian who resides on his or her reservation is also exempt from sales tax on items purchased off the reservation but delivered to the Indian on the reservation. Indians are subject to sales tax on sales of tangible personal property delivered to them off the reservation and sales to them of services where the services are delivered off the reservation. Accordingly, members of the Seneca Nation who reside on either the Cattaraugus or Allegany Reservations and who purchase gas or gas service from Petitioner for use on the reservation would not be subject to New York state or local sales tax.

It is to be noted that the foregoing applies to sales made to Indians residing on reservations of their tribe. Section 1116(a)(6) of the Tax Law, cited by Petitioner, provides for a general exemption from sales tax with respect to: "The following Indian nations or tribes residing in New York State: Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shinnecock, Tonawanda and Tuscarora, where it is the purchaser, user or consumer." This provision, thus, exempts purchases made by the named Indian nations or tribes as such, but not purchases made by individual members of such nations or tribes. Thus, such provision is not applicable in the present instance. That is to say, the exempt status of the sales described by Petitioner derives not from section 1116(a)(6) of the Tax Law but from the principles set forth in the judicial decisions cited above.

DATED: August 9, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau