

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

TSB-A-83(9)S
Sales Tax
March 8, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820609A

On June 9, 1982, a Petition for Advisory Opinion was received from Scives, Inc., Chalet Motel, Route 11, Potsdam, New York 13676.

Petitioner inquires as to the proper sales tax to be collected on transfers made in exchange for foreign money.

Petitioner operates a tavern located near the Canadian border. The majority of his customers are Canadians who pay for their purchases in Canadian currency. Petitioner states that the prices established for all beverages are stated in Canadian dollars, and that his employees are aware of this fact and accept the currency with knowledge that it is not the equivalent of U.S. currency. All transactions with the Canadian customers are handled in Canadian currency; *i.e.*, if a customer presents Canadian money in payment of a purchase and if he is entitled to any change, he would receive his change in Canadian currency. Further, the employees are required to maintain records showing the total Canadian dollars received and the equivalent value in U.S. dollars. For record keeping purposes, employees are required to maintain accurate records showing total Canadian monies received, bank charges and true U.S. dollar value.

The receipts from Petitioner's sales of food and drink are subject to a tax of four percent upon the "receipts" from sales of food and drink. Tax Law, §1105(d)(i). The term "receipts" is defined, in section 1101(b)(3) of the Tax Law, as "The amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise"

Accordingly, where Petitioner makes sales of food and drink in exchange for Canadian money, it is the value of such Canadian money at the time delivered to Petitioner that is the proper base for computing the sales tax due. The tax to be remitted to the Tax Commission, however, must be in the form of United States legal tender.

Section 1135(a) of the Tax Law provides that "Every person required to collect tax shall keep records of every sale and of all amounts paid, charged or due thereon and of the tax payable thereon " Upon an audit, records indicating receipts in the form of "dollars" will be presumed to have been in the form of United States dollars. In order to rebut such presumption Petitioner should maintain detailed records of every sale, with respect to the nature of the receipt in each case, as required by section 1135(a) of the Tax Law.

DATED: February 18, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau