

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

TSB-A-81(55)S
Sales Tax
November 27, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810910A

On September 10, 1981 a Petition for Advisory Opinion was received from New York State Grange Patron of Husbandry, 100 Grange Place, Cortland, New York 13045.

The issue raised is whether or not the New York State Grange and its subordinate Granges are exempt from the payment of State and local sales tax on meals and rooms purchased in conjunction with their meetings and other functions.

The New York State Grange was established as a non-profit corporation by a special act of the Legislature in 1872. Its activities include the holding of meetings at which attending delegates and members carry on the business of the organization. The Grange arranges and pays for certain rooms for its officers. Various lunches and dinners are also scheduled at these meetings for delegates and members. The Grange pays for these meals out of the receipts it obtains from ticket sales to members.

Section 1105(d)(i) of the Tax Law imposes a tax on "The receipt from every sale of . . . food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers"

Section 1105(e) of the Tax Law imposes a tax on "The rent for every occupancy of a room or rooms in a hotel in this state,"

Section 527.9(d)(4) of the Sales and Use Tax Regulations states that "Organizations determined to be exempt under section 1116(a)(4) . . . of the Tax Law" are exempt from the tax imposed on hotel occupancy.

Section 1116(a)(4) of the Tax Law exempts from sales and use tax any sale to and any use or occupancy by:

"(4) Any corporation, association . . . organized and operated exclusively for religious, charitable, scientific, testing for public safety, literacy or educational purposes, . . . , no part of the net earnings of which inures to the benefit of any private shareholder or individual, . . . ;"

This section was modeled after section 501(c)(3) of the Internal Revenue Code and contains identical wording. Although section 501(c) of the Internal Revenue Code contains twenty-two paragraphs which provide income tax exemption to different types of organizations, only those

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organizations which meet the requirements of paragraph three of section 501(c) qualify for sales tax exemption pursuant to section 1116(a)(4) of the Tax Law.

The Federal exemption received by the New York State Grange Patrons of Husbandry and its subordinate units is not granted under section 501(c)(3) of the Internal Revenue Code, as charitable or educational organizations, but rather under section 501(c)(10) as a domestic fraternal society. The promotion of fraternal and social purposes are not among those objectives specified in section 1116(a)(4) of the Tax Law for which sales tax exemption is granted.

Accordingly, since the New York State Grange and its subordinate Granges do not qualify for sales tax exemption pursuant to section 1116(a)(4), their purchases of restaurant meals and rentals of hotel rooms are subject to State and local sales tax.

DATED: November 10, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau