

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

TSB-A-82(13)S
Sales Tax
March 29, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811218B

On December 15, 1981 a Petition for Advisory Opinion was received from Attica Correctional Facility, Box 149, Attica, New York 14011.

The issue raised is whether sales tax is required to be collected on the sale of meals to employees thru a non-profit program conducted in a State institution.

Petitioner, Attica Correctional Facility, conducts a vocational training program in which inmates are trained in entry level job skills necessary for placement in the food service industry. As part of the program a meal is prepared each day for seventy-five to one hundred employees. This service is supplemented by the use of leased vending machines. The program is not operated for profit.

Section 1105 of the Tax Law imposes a sales tax on:

"(d)(i) The receipts 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 . . .

(ii) . . . [but excluding]

(C) food or drink sold through coin operated vending machines at ten cents or less, provided the vendor is primarily engaged in making such sales and maintains records satisfactory to the state tax commission."

Accordingly, sales tax is required to be collected on receipts from the sale of the meals in question, as well as on the receipts from the vending machine sales which are in excess of ten cents. While, the Tax Law provides for an exemption from sales tax generally applicable to sales made by the State of New York, or any of its agencies or instrumentalities, (Tax Law, §1116(a)(1)), that exemption is by the same statutory provision made expressly inapplicable to "sales of food or drink in or by a restaurant, tavern or other establishment"

DATED: March 9, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau