

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

TSB-A-83(24)S
Sales Tax
May 24, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820817B

On August 17, 1982 a Petition for Advisory Opinion was received from Food Systems, Inc., 3300 Transit Rd., West Seneca, New York 14224.

The issue raised is whether charges to customers which are shown as gratuities on the bills presented to such customers are subject to New York State and Local Sales Tax.

Petitioner is the operator of a dining facility. Bills to customers include a stated service charge of either ten or fifteen per cent. The revenues so received are paid over in toto to the employees, whose salaries are below the minimum wage.

Section 527.8(e) of the Sales and Use Tax Regulations, applicable to sales of food and drink, provides as follows:

"(l) Gratuities and services charges. Any charge, made to a customer, is taxable as a receipt from the sale of food or drink unless:

- (i) the charge is separately stated on the bill or invoice given to the customer; and
- (ii) the charge is specifically designated as a gratuity, and
- (iii) all such monies received are paid over in total to employees."

Inasmuch as the procedures described herein satisfy the criteria set forth in the above-quoted provision of the Sales and Use Tax Regulations, the revenues received as service charges are not subject to tax.

DATED: May 9, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau