

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

TSB-A-86(11)S
Sales Tax
April 29, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S851106B

On November 3, 1985 a Petition for Advisory Opinion was received from the National Wildlife Federation, 1412 Sixteenth Street, N.W., Washington D.C. 20036.

The issue raised is whether Petitioner is required to collect the sales and use taxes imposed under Articles 28 and 29 of the Tax Law on its sales mailed into New York State.

Section 1116 of the Tax Law exempts from sales tax certain sales made by or to certain enumerated exempt organizations. Among such exempt organizations are those exclusively devoted to religious, charitable, scientific or educational purposes as described in section 1116(a)(4) of the Tax Law. However, section 1116(b)(1) of the Tax Law provides that retail sales of tangible personal property by any shop or store operated by an exempt organization described in section 1116(a)(4) are subject to sales tax.

Petitioner states that it has been determined to be exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code and is classified as a publicly supported charity under sections 509(a)(1) and 170(b)(1)(A)(vi) of the Internal Revenue Code.

Among other activities, Petitioner is also engaged in the sale of a limited number of products covering several different product lines, ranging from wildlife stamp albums to art objects. These sales are made by means of mail order solicitations. Petitioner limits its sales to members and those individuals it is soliciting for membership and support. These items are shipped by the U.S. Mail or by common carriers to purchasers from Petitioner's warehouse located in the state of Virginia.

Petitioner does not maintain a shop or store in New York State. From time to time, it may own real property in New York State. This property will be used for various purposes but will not be maintained or operated as a shop or store. Petitioner may also employ individuals in New York State. However, these individuals will not solicit any orders for merchandise.

The sales and use tax regulations provide that an organization must establish with the Technical Services Bureau its exempt status before it is entitled to any exemptions. The burden of proving that an organization is entitled to exemption rests with the organization. (20 NYCRR 529.1(b)) Regulation section 529.7 sets forth the procedure for establishing exempt organization status.

Petitioner claims that it is entitled to exemption from sales and use tax under section 1116(a)(4) of the Tax Law. However, Petitioner has not yet applied for exempt status as required under regulation section 529.7.

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Until Petitioner establishes its exempt status with the Technical Services Bureau, Petitioner will not be regarded as an Exempt Organization and therefore, cannot avail itself of the exemption from collecting tax as provided by section 1116 of the Tax Law and in addition, must be considered the same as any other taxpayer.

However, if Petitioner is recognized by the Technical Services Bureau as an exempt organization under section 1116(a)(4), it will not be required to collect tax on its sales of tangible personal property when such sales are made by means of mail order solicitations and the items sold are shipped by U.S. Mail or common carriers to the purchasers from Petitioner's warehouse since such sales are not sales by a shop or store.

DATED: March 26, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.