

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

TSB-H-80 (196) S  
Sales Tax  
October 9, 1980

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800623A

On June 23, 1980, a Petition for Advisory Opinion was received from the City of Rome, City Hall, Liberty Plaza, Rome, New York 13440.

The issue raised is whether sales tax is due on the sales of restaurant meals provided to Petitioner's employees while the same are engaged in City business where (1) Petitioner makes direct payment for the meals and (2) where the meals are paid for by the employee, who subsequently receives specific reimbursement from Petitioner. Petitioner also inquires as to the proper form of exemption certificate to be employed in the latter case, should the transaction in such instance be held to be exempt.

Section 1116(a) (1) of the Tax Law provides for an exemption from sales tax in the case of sales to "The state of New York, or any of its ... political subdivisions where it is the purchaser, user or consumer ...." The City of Rome is such a political subdivision of the State of New York.

Where an employee of Petitioner while engaged in City business is provided with a meal the cost of which is directly billed to and paid for by Petitioner, the above-described exemption is applicable to the receipts from such sale. Where the employee himself pays for the meal and is specifically reimbursed therefor by Petitioner such sale is likewise exempt. The cost of such a meal is deemed to have been specifically reimbursed only where the employee is reimbursed in the full amount of such cost, based upon a required documentary substantiation of the expense.

Accordingly, in both of the situations described by Petitioner the receipts from the sale are exempt from tax. Form AC 946, Tax Exemption Certificate, is the appropriate document to be utilized by Petitioner's employees to obtain the exemption where they are proceeding pursuant to a specific reimbursement plan.

Dated: September 18, 1980

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau