

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

TSB-A-86(53)S  
Sales Tax  
December 10, 1986

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S860721A

On July 21, 1986, a Petition for Advisory Opinion was received from St. Pauls G.O. Church, 110 Cathedral Avenue, Hempstead, NY 11550.

The issue raised is whether certain cook-books sold at the church's office are subject to sales tax.

Petitioner, a Greek Orthodox Church, is a not-for-profit organization which is exempt from federal taxation and has been issued an Exempt Organization Certificate by the New York State Department of Taxation and Finance.

Based on recipes contributed by church members, Petitioner's parishioners have produced the manuscripts of two cook-books ("The Art of Greek Cooking" and "The Regional Cuisines of Greece") with the objective that any royalties earned would go to the church to supplement the treasury. Published and distributed by Doubleday Inc., the books are now available in bookstores.

Petitioner states that the cook-books sold at the church represent a very small portion of the total printing. They are kept on hand solely to fill requests of the parishioners who may purchase the books at the church office for less than the suggested retail price. Since these purchases are few and infrequent, the books are sold from storage in the office safe whenever the person who has access to the safe is available. The church's profits from these sales are negligible.

Section 1105(a) of the Tax Law imposes a tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1116(a)(4) of the Tax Law provides that any not-for-profit corporation or association organized and operated exclusively for religious purposes shall not be subject to the sales tax.

Tax Law Section 1116(b)(1) states further that sales of tangible personal property by such an organization are not taxable unless made through a shop or store.

The Sales and Use Tax Regulations of the State Tax Commission define the terms "shop or store" to include:

any place or establishment where goods are sold from display with a degree of regularity, frequency and continuity as well as any place where sales are made through a temporary shop or store located on the same premises as persons required to collect tax.

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Example 3: A counter is placed in an enclosed area at the back of a church for the purpose of displaying religious articles for sale. The counter is open for business each week for two hours on a specific day at which times a clerk is present. The counter is in a separate area used solely to display tangible personal property for sale and, thus, is a shop or store. 20 NYCRR 529.7(i)(2).

The sales here at issue, as described by the Petitioner, are not made from a display with a degree of regularity, frequency and continuity, nor do they take place in an area set aside for the selling of tangible personal property. Such sales are not considered to be made through a shop or store within the meaning and intent of the above quoted regulation section, and are therefore not subject to the sales tax. See Lake Placid 1980 Olympic Games, Decision of the State Tax Commission, Oct. 3, 1985, TSB-H-85(232)S.

However, if Petitioner were to sell the cook-books from a display at scheduled hours or at events where vendors required to collect tax offer merchandise for sale, such sales would be taxable, because each of these locations would be deemed a shop or store pursuant to the Tax Law. See Rochester Philharmonic Orchestra, State Tax Commission Advisory Opinion, November 10, 1981, TSB-A-81(56)S.

DATED: December 10, 1986

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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