

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

TSB-A-90 (18) S
Sales Tax
April 16, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900202B

On February 2, 1990 a Petition for Advisory Opinion was received from Chris Pratt, 34 Country Corner Lane, Fairport, New York 14450.

The issue raised by Petitioner, Chris Pratt, is whether charges for the following items by a dog club are subject to sales tax under Article 28 of the Tax Law.

- a) Admission charges for viewing a dog show.
- b) Fees paid by people for entering their dogs in a dog show.
- c) Cage rentals.
- d) Baked goods sales.

A dog club organized under IRC 501(c)(7), holds dog shows for the purpose of raising money to cover administrative costs, with all excesses being contributed to other tax exempt organizations whose aim is the prevention of cruelty to animals. The shows are attended by the general public who pay admission charges. Additionally, people who enter their dogs in the show are charged fees to cover judging fees, awards and to raise money for other charities. The club rents out dog cages for use by dog owners at the shows. Baked goods are also sold. Finally, advertisers buy space in a brochure which is handed out at the shows at no charge. No members are paid salaries and all their time is donated without cost.

Section 1116(a)(4) of the Tax Law provides:

Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

* * *

(4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise

attempting to influence legislation, (except as otherwise provided in subsection (h) of section five hundred one of the United States internal revenue code of nineteen hundred fifty-four, as amended), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office;...

Section 501(a) of the Internal Revenue Code of 1986 provides:

EXEMPTION FROM TAXATION. -- An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

Section 501(c)(7) of the Internal Revenue Code of 1986 provides:

LIST OF EXEMPT ORGANIZATIONS. -- The following organizations are referred to in subsection (a):

* * *

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

Although a dog club may qualify as an exempt organization under Section 501(c)(7) of the Internal Revenue Code, this does not mean that it automatically qualifies as an exempt organization as defined in Section 1116(a)(4) of the Tax Law. A dog club that conducts dog shows is not organized and operated exclusively for any of the purposes enumerated in Section 1116(a)(4) and thus is not exempt from collecting sales tax on admission charges or sales or rentals of tangible personal property. The fact that the dog club may make contributions to other charities or the fact that it may be operated on a not-for-profit basis does not entitle it to the exemption provided by said section.

Pursuant to Section 1105(f)(1) of the Tax Law a sales tax is imposed on:

Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state, except charges for admission to race tracks, boxing, sparring or wrestling matches or exhibitions which charges are taxed under any other law of this state, or dramatic or musical arts performances, or motion picture theaters, and except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools.

Section 527.10(b)(3) of the Sales and Use Tax Regulations defines a place of amusement as:

Any place where any facilities for entertainment, amusement, or sports are provided. Such places include without limitation (i) a theatre of any kind, concert hall, opera house, or other place where a performance is given; (ii) fairground or exhibition hall or grounds (iii) golf course, athletic field, sporting arena, gymnasium, bowling alley, shooting gallery, swimming pool, bathing beach, skating rink, tennis court, handball court, billiard hall or other place for athletic exhibits; (iv) "penny arcades"; any room which includes ping pong tables and amusement devices, and any amusement device, carousel, miniature fair, ferris wheel and other amusement rides, whether or not contained in an enclosure.

The dog show is held in a facility, which qualifies as a place of amusement pursuant to Section 527.10(b)(3) of the Sales and Use Tax Regulations. Charges for admission to dog shows do not qualify as charges for admission to race tracks, boxing, sparring or wrestling matches or exhibitions which charges are taxed by any other law of this state. Accordingly, the charges for admission to dog shows held by the dog club are subject to sales tax.

Section 1105 of the Tax Law does not impose sales tax on fees paid by people to enter their animals to be judged in shows. Accordingly the dog club's charges to contestants for entering their dogs in its dog shows are not subject to sales tax.

Section 1101(b)(5) of the Tax Law defines a sale for the purposes of the tax imposed by Section 1105(a) of the Tax Law as:

Any...rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 526.7(a)(2) of the Sales and Use Tax Regulations provides that:

Among the transactions included in the words sale, selling or purchase are...rentals, leases or licenses to use or consume tangible personal property.

Section 527.7(c)(1) of the Sales and Use Tax Regulations provides that:

The terms rental, lease, license to use refer to all transactions in which there is a transfer of possession of tangible personal property without a transfer of title to the property...

TSB-A-90 (18) S
Sales Tax
April 16, 1990

Therefore the charges for cage rentals made by the dog club for the use of dog cages by owners at its shows constitute rentals of tangible personal property in accordance with Section 1101(b)(5) of the Tax Law and Sections 526.7(a)(2) and 527.7(c)(1) of the Sales and Use Tax Regulations and thus such charges are subject to sales tax pursuant to Section 1105(a) of the Tax Law.

Section 1105(d)(i) of the Tax Law imposes a sales tax on the receipts from the sale of ". . . every sale of food and drink of any nature or of food alone. . ."

Section 1105(d)(i)(1) imposes the tax "in all instances where the sale is for consumption on the premises where sold."

Section 527.8 of the Sales and Use Tax Regulations define the terms "premises" and "consumption on premises" as follows:

(c) Premises. The term premises shall mean the total space and facilities in or on which the vendor conducts his business, including but not limited to parking areas for the convenience of in-car consumption, counter space, indoor or outdoor tables, chairs, benches and similar conveniences.

(d) Consumption on premises. The phrase for consumption on the premises shall mean that the food or drink sold may be consumed on the premises where the vendor conducts his business.

Accordingly, the sale by the dog club of baked goods for on premises consumption, at its show facility is subject to sales tax. Little Ozzie's Inc., Adv Op Comm T & F, February 8, 1990, TSB-A-90(6)S. However if the sale of baked goods is for consumption off the premises and is in the same form as sold by food stores or bakeries, then the sale of such baked goods would not be subject to sales tax in accordance with Section 1105(d)(3) of the Tax Law.

DATED: April 16, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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