

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-11(20)S
Sales Tax
July 8, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S101118A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its sales of e-books are subject to sales and use tax. We conclude that they are not.

Facts

Petitioner, a California company, stores a digitized catalog of electronic books ("e-books") available for sale to customers inside and outside New York through its on-line bookstore. E-books purchased through Petitioner's electronic bookstore are delivered electronically via the Internet to customers and are stored on the customer's personal electronic devices, including tablets and smart-phones. Customers are then able to view and read the e-books on certain electronic devices. The e-books purchased through Petitioner's electronic bookstore are not generally available for printing and are not transferable for viewing on a computer.

The catalog of e-books available for download will primarily consist of copyrighted content, licensed for distribution to Petitioner, but not owned by Petitioner. Moreover, the informational content of an e-book sold through Petitioner's bookstore will not materially differ from the tangible version of the same publication. Formatting and layout of text in the e-book may be different, but the informational content of an e-book will not differ in any substantive respect from that of a tangible, printed copy of the same book. Petitioner's e-books, like their printed counterparts, may be updated (for instance, to correct typographical errors) in subsequent printings, but are otherwise static. Also like their printed counterparts, Petitioner's e-books may be re-published in future editions or printings, but the purchase of updated copies is generally a separate transaction unrelated to prior purchases of earlier editions. To pay for the e-books, Petitioner's customers may use a credit card serviced by a third party financial institution, or other methods.

Petitioner represents that its e-books meet the definition of an e-book for purposes of the policy that the Department of Taxation and Finance recently announced (*Department's Policy Regarding Whether E-Books Constitute Information Services Subject to Sales and Use Taxes*, TSB-M-11[5]S).

Analysis

The Tax Law imposes sales and use tax on tangible personal property, including prewritten software, and certain enumerated services, including information services (Tax Law § 1105[a], [c]).

Petitioner's e-books are not tangible and do not include any prewritten computer software. Accordingly, they do not constitute tangible personal property. As to whether the e-books constitute taxable information services, TSB-M-11(5)S provides that the Tax Department's current position is that electronic publications that meet the memorandum's definition of an e-book do not constitute information services. The TSB-M sets forth the following definition of an e-book:

- the purchase of the product does not entitle the customer to additional goods and services and any revisions done to the e-book are for the limited purpose of correcting errors;
- the product is provided as a single download;
- the product is advertised or marketed as an e-book or a similar term;
- if the intended or customary use of the product requires that the product be updated or that a new or revised edition of the product be issued from time to time (e.g., an almanac), the updates or the new or revised editions are not issued more frequently than annually; and
- the product is not designed to work with software other than the software necessary to make the e-book legible on a reading device (e.g., Kindle, Nook, iPad, iPhone or personal computer).

Petitioner represents that all of its e-books meet the above definition. Based on that representation, Petitioner's e-books are not taxable as information services under the Department's current policy.

DATED: July 8, 2011

/S/

DEBORAH LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.