

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

TSB-A-12(26)S
Sales Tax
October 15, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S110722A

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED]. Petitioner asks whether its receipts from the sale of pattern or project downloads (eProjects) are subject to tax.

We conclude that, since Petitioner's pattern downloads and eProjects are not sold in tangible form and are not sold with other tangible items, such as craft materials, the sale of these items is not subject to sales or use tax pursuant to sections 1105(a) or 1110(a) of the Tax Law.

Facts

Petitioner is a company based in another state that publishes various arts and craft related books, magazines, DVDs, and patterns in both physical and downloadable versions. Petitioner sells downloads of patterns, eProjects, E-Books, periodicals, and videos directly to consumers. Access to the pattern downloads and eProjects is through the use of an online check-out tool that allows the customer to select and pay for the electronic pattern or project which the customer would like to download. Petitioner described an electronic pattern and an eProject as follows: An electronic pattern consists of step-by-step instructions that are downloadable to teach someone how to make something, such as how to knit a hat or crochet a scarf. An eProject is a collection of multiple electronic patterns combined together into one download, such as a certain number of jewelry projects.

Analysis

The Tax Law imposes sales and use tax on tangible personal property, including prewritten software. *See* Tax Law § 1105(a). Petitioner's pattern downloads and eProjects are non-tangible electronic or digital files that provide patterns and instructions for purchasers to make their own craft projects. The downloads do not appear to provide any access to prewritten computer software. The downloaded patterns and eProjects are also not sold in conjunction with tangible personal property (such as materials to make the craft projects). To

the extent that this is the case, they would not constitute tangible personal property and their sale or use would not be subject to sales or use tax. *See* TSB-A-07(14) S, TSB-A-01(15) S.

DATED: October 15, 2012

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

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