

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether its subscription fees to access its online course library are subject to State and local sales tax. We conclude that Petitioner's receipts from the sale of its subscriptions are not subject to tax.

Facts

Petitioner is an online learning company that helps people learn new skills on various topics to achieve personal and professional goals. Such skills include business, software, technology, and creative skills. Through individual and group subscriptions, members are granted a right to access Petitioner's video library of courses taught by industry experts.

Petitioner sells three tiers of membership. The purchase of a Basic subscription gives the user unlimited access to Petitioner's video library for one month. The purchase of a Premium-monthly subscription also provides one month of unlimited access, and further allows the user to download "project files," which are documents used by the course instructor and include worksheets, practice problems, and examples. Project files do not include applications of functioning software. The purchase of a Premium-annual subscription provides one year of unlimited access to Petitioner's video library, as well as the downloadable project files, and further enables the user to download the courses for offline viewing. The downloaded video courses are non-interactive files formatted for viewing on a mobile device.

Users access and play video content from either a computer using their existing web browser or from their mobile device using Petitioner's free software application (hereinafter "app"). This app is obtained free of charge from app stores owned and operated by unrelated third parties. When using a web browser, users can search the online library, bookmark videos, build custom playlists, and start, stop, and restart videos. Users also may search course transcripts for immediate answers to their questions. The learning experience through the app is largely similar to the experience when viewing videos through a computer's web browser although the user's degree of control through the app is generally limited to the ability to view

videos and course content, and to search for, start, stop, restart, and bookmark videos. The app does not allow interactive questioning, learner assessment, or testing capabilities.

For most of the courses, users earn a Certificate of Completion for each course they view. For certain video courses, users may contact the video's authors to ask questions and receive additional support at no additional cost. However, responses are not returned in real time.

The video courses are not interactive and do not require the member to actively engage in the learning process. The video courses do not provide immediate and supportive feedback and do not have embedded questions to engage the user. For the best learning experience, users are encouraged to follow along with their own installation of the software application during the training video. For example, if a user is viewing a video course about features of Microsoft Excel, the user is encouraged to follow along with their own version of Microsoft Excel, but an operative copy or version of Microsoft Excel is not included as part of Petitioner's service offering.

Analysis

The receipts from the sale of tangible personal property and enumerated services, including information services, are subject to tax. *See* Tax Law § 1105(a), (c). Petitioner's Basic subscription allows a customer to access and view its digital video courses online. The courses are designed to assist the customer in learning and developing new skills. Subscriptions to access and view Petitioner's online video course library do not constitute tangible personal property. These subscriptions also do not constitute the provision of an information service subject to sales tax under Tax Law § 1105(c)(1), because their purpose is to impart knowledge by providing access to instructional course material. *See* TSB-A-13(6)S. Accordingly, sales of Petitioner's Basic subscription are not subject to sales tax.

Petitioner's Premium-monthly subscription provides the customer with the additional ability to download project files. The electronic download of these project files to a customer's computer or other device does not constitute the sale of tangible personal property because the project files are not delivered to the customer in a tangible format. *See* TSB-A-15(26)S. Also, the provision of the project files is not an information service because the project files are provided to supplement the video courses and enhance the customer's learning experience. Therefore, sales of Premium-monthly subscriptions are not subject to sales tax.

Petitioner's Premium-annual subscription further allows the customer to download its digital video courses for offline viewing. While receipts from the sale of prewritten computer software, which constitutes tangible personal property as defined in Tax Law § 1101(b)(6), are

subject to sales tax pursuant to Tax Law § 1105(a), receipts from the sale of videos delivered to customers electronically over the Internet and downloaded to a customer's computer or other device are receipts from the sale of intangibles and are not subject to sales tax under Tax Law § 1105(a). *See* TSB-A-08(41)S; TSB-A-08(22)S. Therefore, sales of Premium-annual subscriptions are likewise not subject to sales tax.

DATED: June 16, 2020

/S/

DEBORAH R. LIEBMAN

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.