

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

TSB-A-14(1)S
Sales Tax
January 23, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120904A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks how four products, which it describes as e-books, will be treated for sales tax purposes, especially when they may be shared across multiple devices or e-readers and these products may be sold with a time-limited license.

We conclude that Product #2 is an e-book and it is not taxable as an information service under the Department's current policy, even when shared across multiple devices or e-readers and sold with a time-limited license. The Department concludes that the other three products are not properly classified as e-books and there is not sufficient information in these facts to determine if they would qualify for any other tax exemption.

Facts

Petitioner, headquartered in Virginia with a satellite office in New York City, is an Internal Revenue Code § 501(c)(6) organization whose operations revolve around the administration of a professional certification program for the financial industry. Petitioner develops the curriculum and conducts examinations for candidates who wish to gain certification as a [REDACTED] (Credential). Candidates seeking Credential are typically investment managers or financial analysts. In order to obtain Credential, candidates must pass three sequential examinations. Petitioner administers the professional certification examination twice each calendar year in approximately 43 states and are provided in most states.

In addition to administering the examinations, Petitioner publishes research, conducts professional development programs, and sets ethics-based professional and performance reporting standards for the financial industry. Membership is not required in order to make purchases of the books, periodicals, or other materials offered for sale by Petitioner. Therefore, Petitioner routinely makes sales of its materials to exam candidates as well as the general public.

Recently, Petitioner started to offer the option to purchase various resources via electronic download instead of in hardcopy. Purchasers can now download copies of books, periodicals, white papers, and other publications relevant to the financial industry directly from Petitioner's website.

For sales of electronically downloaded books ("e-books"), purchasers are entitled to a one-time purchase that does not include the provision of any tangible personal property,

pre-written computer software, or customized information of any kind. The e-book license is only for the specific e-book being purchased and is only updated for errors in the content that require correction. The license does not allow for "updates" of content, nor does it allow the purchaser to receive an updated version of the e-book for free. In order to obtain an updated version of the e-book, the purchaser will have to repurchase the book.

Petitioner has four electronically downloaded products, which they describe as e-books, and for which it requests guidance about the sales treatment. The products offer either a 30-day or a five-year license. In the case of Products #2 and #3, the relevant limited licenses allow consumers the ability to view the product and any notes they may have added to the product during the license period. If a consumer purchases an updated version of Products # 2 or #3, the consumer will lose any notes that he or she may have added into his or her prior version.

Each of the four products is described below:

Product #1: Petitioner publishes a "Conference Proceedings Quarterly." This publication offers a digest of material presented in various conferences relevant to the financial industry. These publications offer insights from leading practitioners and academics on topics ranging from risk management to wealth management, conventional wisdom to cutting-edge concepts. Readers of these publications are eligible for 0.5 continuing education credits for each issue. The general public is allowed to purchase these publications. Purchasers are given a 30-day license to access the content after activation.

Product #2: Petitioner publishes a Program Curriculum designed by a committee of practicing individuals who have obtained Credential, in conjunction with Petitioner's staff, to deliver a study guide to exam candidates. The curriculum for each exam level is organized into 18 study sessions, including assigned readings, learning outcome statements (LOS), and problem sets. The e-book version of this product provides access to the curriculum in digital format for use on a personal computer, Apple mobile device (including iPad, iPhone, and iPod Touch), Android phone, or the Kindle Fire. A purchaser is permitted to download this content onto multiple devices he or she owns. The general public is allowed to purchase this curriculum. Purchasers are given a 5-year license to access the content after activation.

Product #3: Petitioner offers a suite of online courses to the general public for self-paced learning on a variety of topics relevant to the investment industry. Each course is designed to provide practical learning materials and activities. Purchasers are given a 5-year license to access a web-based portal and download all related materials, worksheets, and other study materials assigned to a particular course.

Product #4: Petitioner publishes a bimonthly journal that addresses topics relevant to the investment industry. Readers of the journal are eligible to receive continuing education credits upon reading qualifying articles. Purchasers are given a 30-day license to access the content within these publications and they are available to the general public.

Analysis

The Tax Law imposes sales and use tax on tangible personal property, including pre-written software, and on certain enumerated services, including information services. *See* Tax Law § 1105(a), (c).

Petitioner's products are not tangible and do not include the provision of any pre-written software. Accordingly, they do not constitute tangible personal property.

As to whether the products constitute taxable information services, TSB-M-11(5)S provides 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).

Upon a review of the facts, Products #1 and #4 do not qualify as e-books, because they are published more than once a year. Product #3 is not an e-book because it is an on-line course. However, we do not have sufficient information about these products to determine if they otherwise constitute information services.

We conclude that Product #2 meets the above definition of an e-book. First, it does not include the provision of any tangible personal property, pre-written computer software, or customized information of any kind. Second, it is a one-time purchase. Third, it is advertised or marketed as an e-book or a similar term. Fourth, the license does not allow for "updates" of content, nor does the license in anyway allow for an updated version of the e-book for free. Fifth, this product is a publication or course materials and it is not designed to work with software other than the software necessary to make it legible on a reading device. Based on these facts, Petitioner's Product #2 is not taxable as information services under the Department's current policy.

Petitioner specifically requests clarification on two particular aspects of this e-book. First, this product is provided to the consumer to be used across multiple devices or e-readers owned by any given consumer. Second, this product is sold with a limited license. There is

nothing about these two additional details that prevents the product from qualifying as an e-book. As to the ability to read the e-book on multiple devices or e-readers, access to all these devices is allowed under the one-time purchase to one user. As to the license, it merely limits access to the e-book for a particular length of time. It does not change the nature of product.

Accordingly, we conclude that Product #2 is considered an e-book and is not taxable as an information service under the Department's current policy. We further conclude that the other three products are not properly classified as e-books, and there is not sufficient information in these facts to determine whether they are subject to tax or if they might qualify for any other tax exemption.

DATED: January 23, 2014

/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.