

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

TSB-A-15(26)S  
Sales Tax  
July 10, 2015

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S131112A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether receipts from its sales of continuing legal education (CLE) self-study programs delivered via compact disks (“CDs”) and digital video disks (“DVDs”) are subject to State and local sales tax. It also asks whether sales of CDs, DVDs, and other items by themselves are subject to tax.

We conclude that Petitioner’s receipts from its sales of CLE self-study programs offering CLE credit delivered via CDs and DVDs are not subject to State and local sales tax if Petitioner includes its affirmation form for the customer to return to Petitioner upon completing study of the program materials. However, Petitioner’s receipts from its sales of CDs and DVDs without CLE credit and from its sales of books and reference materials on a variety of legal subjects are subject to tax if Petitioner delivers them to customers at locations in this State.

**Facts**

Petitioner provides Continuing Legal Education (“CLE”) courses in the State of New York. The New York State Continuing Legal Education Board requires attorneys to maintain their professional competence by continuing their legal education through the period of their active practice of law. Petitioner and its CLE courses have been accredited by the CLE Board.

Petitioner offers live seminars on a variety of legal topics enabling attorneys (“students”) to earn required CLE credit hours each year. In addition to offering live seminars, Petitioner also offers CLE credit through self-study programs. The purpose of the self-study programs is to earn the required CLE credit hours. The self-study seminar content is delivered via CDs or DVDs. Petitioner’s live seminars are recorded and replicated onto CDs and DVDs for distribution as self-study seminars. Students wishing to take CLE self-study seminars order self-study seminars online or by printing Petitioner’s order form and mailing it with the applicable payment to Petitioner. Petitioner will then mail the self-study seminar content to the student via common carrier. Generally, the self-study seminar content consists of a CD or DVD containing the course content, a CD-ROM of the reference materials in pdf format, and the related affirmation form. A student who wishes to purchase additional affirmations for other attorneys in his or her law firm may do so at additional cost. The cost for the additional affirmations and additional CD-ROMs containing the reference materials is a separately stated charge. During the course of the self-study seminar, the student is required to write down a series of codes that appear at intervals throughout the seminar as evidence that the student viewed the entire course content. At the conclusion of the self-study seminar, the student is required to return the affirmation form,

certifying completion of the seminar, in order to obtain a CLE certificate of completion from Petitioner.

Instructors of the live seminars are attorneys who are subject matter experts in their field. These instructors and other personnel of Petitioner are available to answer questions during live seminars. Students that take the self-study seminars may contact Petitioner with any questions regarding the seminar content. Given that the seminar content is highly specialized, Petitioner will provide the student with the instructor's contact information so the instructor may be contacted directly with any questions.

In addition to offering live seminars and CLE self-study seminars, Petitioner also sells books and reference materials on a variety of legal subjects. Orders for books and reference materials may be placed online, via telephone or may be mailed or faxed in using an order sheet.

### **Analysis**

Tax Law § 1105(c) imposes sales tax on receipts from sales, other than for resale, of specific enumerated services. Educational services provided by a school are not among the specific services taxable under § 1105(c). A school's transfer of course materials and books to its students that are included in its charge for the course is considered part of the educational services provided by the school and the transfer of these items is not subject to sales and use tax. *See* TSB-A-06(4)S.

Petitioner's students' primary objective in purchasing its self-study materials is to complete courses of subject matter study and earn CLE credits. When Petitioner sells the self-study material, i.e., the CD or DVD, the CD-ROM of reference materials and the affirmation form, or the additional affirmations and CD-ROMS, it is providing the students with the means by which they can complete courses of study at home or in the office. In this way, students earn the same CLE credit for the course as students who pay to attend Petitioner's live seminars. Each student is required to "take the course" and complete and return the affirmation that Petitioner furnished as part of the course in order to earn the CLE credit. Petitioner affords students the opportunity to call and ask questions of the course presenter, just as students in a college or school can ask questions of their teachers, and just as students at Petitioner's live seminars can do. Therefore, Petitioner is providing an educational service and its charges to its students who purchase a CLE course with an affirmation for CLE credit are charges for Petitioner's educational services and are not charges for the sale of tangible personal property, i.e., the CD or DVD and CD-ROM. Accordingly, Petitioner is not required to collect tax on its charges for its CLE courses. *See* TSB-A-13(1)S, TSB-A-06(6)S, and TSB-A-06(5)S.

Separate and apart from its CLE courses, Petitioner also sells CDs, DVDs, CD-ROMs, books, and other tangible personal property. State and local sales taxes are imposed on retail sales of tangible personal property in this State. *See* Tax Law § 1105(a). Tax Law § 1101(b)(6) defines "tangible personal property" to mean corporeal personal property of any nature. CDs, DVDs, CD-ROMs, books, and printed reference materials are corporeal personal property. Because Petitioner is located in this State and makes sales of such tangible personal property, it is a vendor and a person required to collect tax. Thus, it must register for sales tax purposes,

collect tax on taxable sales delivered to purchasers in New York, file returns, remit tax required to be collected, and keep records. *See* Tax Law §§ 1101(b)(8), 1131(1), 1132, 1134, 1135, and 1136; 20 NYCRR § 525.2(A)(2) and (3).

DATED: July 10, 2015

/S/  
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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.