

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 receipts from its sales of online courses of study are subject to State and local sales tax. We conclude that Petitioner's receipts from its sales of online courses are not subject to sales tax.

Facts

Petitioner is a provider of online courses in the form of pre-recorded lectures that are available to the public. Petitioner's "Terms of Use" govern the use of Petitioner's website, apps, and other products. Products are accessed as an online service and also as downloads to a computer, phone, tablet or other device. There is no charge for the online access and downloaded software and updates.

Petitioner grants the user a limited, personal, non-exclusive, non-transferable, and revocable license to use the product that is permitted to be accessed or downloaded for only personal, non-commercial use unless written permission is obtained to otherwise use the content. A user also agrees that the user will create, access, and/or use only one user account, and will not share access to that account with any third party. The user acknowledges that use of Petitioner's product does not grant any ownership of any intellectual property rights in the services or the content accessed.

A user first creates an account directly with Petitioner. Once logged in, the user may choose from the various courses offered by Petitioner. At the time the Petition for Advisory Opinion was submitted Petitioner offered 1,764 courses taught by professors from 147 partnering universities. The user registers for the course of the user's choice, and begins the course.

The users stream the videos directly from the Petitioner's website. Classes have syllabuses, modules, quizzes, and a grading procedure. Grading is based primarily on multiple choice testing, but some courses provide peer review assignments where fellow students grade the user's work. While students have little or no interaction with the instructor, each course offers an online forum for peer discussion regarding the course. On this forum, students may post questions, answers, or general discussion topics to engage with other students enrolled in that course. At the end of the course, there generally is an exam administered by Petitioner. If the exam has objective answers, the instructor has previously documented the correct answers and the passing grade. Petitioner merely administers the exam grading. If the exam is subjective

(for example, an essay exam), Petitioner administers the exam via peer review as described above, based on the instructor having set the minimum threshold for passing the course.

Most of Petitioner's courses are free to the general user. The users can register and complete the course without payment.

Petitioner also offers "Course Certificate" courses for a fee. The "Course Certificate" courses offer verified completion certificates issued by Petitioner, and include the University or industry partner name, e.g. Cisco, Google, or IBM. Certificates confirm the learner's identity so that the learner can list the course on his/her resume and job posting websites, provide verification of work related training, etc. These courses are open to all, and are priced at \$29 - \$79 per course, but can be purchased on a subscription basis for \$49 per month.

In addition, Petitioner offers Specializations for learners who want to master a specific skill. Specializations are a coherent series of courses designed to teach a particular skill. When a learner completes a Specialization, he/she receives a "Specialization Certificate." Specializations are offered on a subscription basis for \$39-\$79 per month.

Finally, Petitioner offers "University-recognized" degrees. Petitioner works with University partners to offer online degree programs in areas such as business, accounting and computer science. This program includes more instructor involvement and a higher threshold to pass each course because the courses satisfy requirements for an accredited degree. This program also requires a capstone project or collaborative group project prior to the issuance of a degree. When a learner qualifies for admission, and completes all requirements, he/she receives an accredited online degree from the University. This program is priced at \$20,000. Petitioner does not sell the degree program directly to the learner; the degree-granting University does. Petitioner provides a portion of the online learning.

Specializations and degree programs utilize the same online features as described with the regular catalogue courses.

Analysis

The receipts from the sale of tangible personal property and enumerated services are subject to tax, unless otherwise provided. *See* Tax Law § 1105(a), (c). Prewritten computer software is considered tangible personal property, regardless of the medium by means of which such software is conveyed to a recipient. *See* Tax Law § 1101(b)(6), (14). However, since Petitioner's online access and downloads themselves are free to all users, there is no charge or receipt for the downloading of the software; therefore, the software is not subject to tax. *See* Tax Law § 1101(b)(3).

Petitioner charges a fee for "course certificate" videos for which the user receives a streaming video and a certificate verifying completion of a course. This is neither taxable

