

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-H-80(103)S
Sales Tax
June 16, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

Petition No. S800319A

On March 19, 1980, a Petition for Advisory Opinion was received from the New York Insurance Exchange, Inc., 99 John Street, New York, NY 10005.

The issue raised is whether or not the Insurance Exchange is exempt from the payment of sales and use tax imposed under Articles 28 and 29 of the Tax Law.

The Insurance Exchange was established pursuant to Section 425-a of the Insurance Law of the State of New York.

The purpose of the Insurance Exchange is to provide a facility for the underwriting of all kinds of reinsurance, direct insurance on risks located entirely outside the United States, and insurance of certain otherwise uninsurable risks.

As mandated by the legislature of the State of New York, the Insurance Exchange was organized as a Not-for-Profit Corporation.

Subdivision 4 of Section 425-a of the Insurance Law explicitly exempts the Insurance Exchange from all ". . . taxes and fees measured by income, premiums or gross receipts"

Section 1116(a) of the Tax Law provides an exemption for "(1)The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer....(2) The United States of America, and any of its agencies and instrumentalities (4) Any corporation, association, trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals...."

To be exempt from payment of sales and use tax, the Insurance Exchange would have to qualify under one of the above sections of the Tax Law or by a specific provision of the Insurance Law.

The Insurance Exchange does not fall into one of the following categories:

1. Governmental Agency

The Exchange is not a Federal agency. Nor does it appear to be a State agency or public corporation.

The Exchange is not owned or operated by the State. It is organized for the purpose of operating a board of trade rather than for some public purpose as is usually the case with public corporations. Furthermore, membership in the Exchange is made up solely of insurance companies and its board of governors is elected by its members.

Finally, the implementing statute usually specifies that an entity is a governmental agency or public corporation if it is intended to be one by the legislature. No such provision is found in the applicable statutes.

2. Charitable, Educational, Etc.

The Insurance Exchange is not formed for exclusively religious, charitable, scientific, testing for public safety, literary or educational purposes. It is formed to operate a commercial establishment.

3. Specific Provision of Law

The Exchange is exempt from certain taxes pursuant to the provisions of §425-a(4) of the Insurance Law. These taxes include all state or local taxes measured by income, premiums or gross receipts. They do not include the Sales Tax.

Accordingly, the Insurance Exchange is not eligible for exemption from paying New York State and Local Sales and Use Taxes.

Dated: May 30, 1980

s/MICHAEL ALEXANDER
Deputy Director
Technical Services Bureau