

**New York State Department of Taxation and Finance**  
**Office of Tax Policy Analysis**  
**Technical Services Division**

TSB-A-02(19)S  
Sales Tax  
June 26, 2002

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S010619A

On June 19, 2001, the Department of Taxation and Finance received a Petition for Advisory Opinion from Journey Education Marketing, Inc., 1325 Capital Parkway #130, Carrollton, TX 75006.

The issue raised by Petitioner, Journey Education Marketing, Inc., is whether, under the circumstances presented, a mail-order company with no offices or employees in New York State is relieved of any future sales and compensating use tax collection obligations.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is in the business of reselling educational software products. For a period of time, Petitioner had a representative based in Texas who traveled to New York State to meet customers and occasionally to attend trade shows, but who did not have authority to accept sales orders. All orders were accepted at the corporate office in Carrollton, Texas. Petitioner is currently registered as a vendor with the State of New York for sales and use tax purposes.

Petitioner has discontinued all representatives traveling in New York and in most other states. Petitioner's representatives no longer attend trade shows in New York. Petitioner has not employed salespeople or independent sales representatives who solicit sales in New York since December 31, 1999. Petitioner states it has no other physical presence in New York.

Sales activity has been concentrated into mail order sales and sales will only be solicited through catalogs and other promotional materials, which are sent directly to consumers, educators, and educational institutions, and through Petitioner's Internet Web site. All items sold are delivered to customers by common carrier or electronically via the Internet. All orders are accepted at Petitioner's corporate headquarters located in Carrollton, Texas. Petitioner anticipates that taxable sales in New York State will be less than \$750,000 on an annual basis. Petitioner would like to formally withdraw its sales tax registration in New York because it no longer has a physical presence in the state, and no longer has employees or independent representatives soliciting sales in the state.

**Applicable Law and Regulations**

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

\* \* \*

(4) Retail sale. (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property . . . .

\* \* \*

(8) Vendor. (i) The term "vendor" includes:

(A) A person making sales of tangible personal property or services, the receipts from which are taxed by this article;

(B) A person maintaining a place of business in the state and making sales, whether at such place of business or elsewhere, to persons within the state of tangible personal property or services, the use of which is taxed by this article;

(C) A person who solicits business either:

(I) by employees, independent contractors, agents or other representatives;  
or

(II) by distribution of catalogs or other advertising matter, without regard to whether such distribution is the result of regular or systematic solicitation, if such person has some additional connection with the state which satisfies the nexus requirement of the United States constitution;

and by reason thereof makes sales to persons within the state of tangible personal property or services, the use of which is taxed by this article;

(D) A person who makes sales of tangible personal property or services, the use of which is taxed by this article, and who regularly or systematically delivers such property or services in this state by means other than the United States mail or common carrier....

Section 1131(1) of the Tax Law provides, in part:

"Persons required to collect tax" or "person required to collect any tax imposed by this article" shall include: every vendor of tangible personal property or services; every recipient of amusement charges; and every operator of a hotel.

Section 526.10(a)(4) of the Sales and Use Tax Regulations provides, in part:

(i) A person who solicits business by the distribution of catalogs or other advertising matter, without regard to whether such distribution is the result of regular or systematic solicitation, if such person has some additional connection with the State which satisfies the nexus requirement of the United States Constitution and by reason thereof makes sales to persons within the State of tangible personal property or services the use of which is subject to tax, is a vendor.

(ii) For purposes of subparagraph (i) of this paragraph, the additional connection with the State a person may have in order to qualify as a vendor shall include, but not be limited to:

\* \* \*

(b) the presence of traveling sales representatives in the State;

(c) the presence of employees, independent contractors or agents in the State;

(d) the presence of service representatives in the State....

Section 533.1(f) of the Sales and Use Tax Regulations provides, in part:

Surrender of certificates and permits. (1) Certificates of authority must be surrendered to the New York State Department of Taxation and Finance, Sales Tax Registration Unit, W.A. Harriman Campus, Albany, NY 12227 within 20 days of the registrant's ceasing to do business, and must accompany the final return. Ceasing to do business means that the registrant is no longer operating the business even though the business may continue.

(2) Upon surrendering the certificate of authority, the vendor must complete the reverse side of the certificate and indicate the details of the sale or other disposition of the business. Where a certificate of authority has been lost, stolen, destroyed or is otherwise unreturnable to the department, the owner, partner or responsible officer of a vendor which was issued such certificate is required to notify the Sales Tax Registration Unit that such certificate cannot be returned, setting forth the specific reasons for such failure. The notification must be in written form, signed by the owner, partner or responsible officer and received within 20 days of the registrant's ceasing to do business.

Section 533.3(e) of the Sales and Use Tax Regulations provides, in part:

Final returns. (1) A vendor who ceases operation, sells his business, or changes the organizational form of the business must file a final return within 20 days after the occurrence of such event.

(2) The return must indicate the actual period covered by the return, calculated from the first day of the period in which the event occurred to the final day of business.

(3) The final return is to be on a return for the period in which such event occurs, and must be clearly marked at the top, "FINAL RETURN". Monthly filers are also required to file a final quarterly return.

\* \* \*

(4) The final return is to be completed as set forth in paragraph (b)(3) of this section.

(5) The final return must be accompanied with payment of all taxes due, from the first day of the period to the final day of business, as well as any tax collected on a bulk sale, penalties and interest due, and must be accompanied by the certificate of authority to collect taxes.

### **Opinion**

Petitioner has discontinued its practice of having sales representatives or sales agents in New York State and it states that it now has no physical presence in New York. Petitioner will continue to operate a mail order sales business, with anticipated taxable sales in New York of no more than \$750,000 on an annual basis. These mail order sales will be solicited through catalogs, similar promotional mailings and Petitioner's Internet Web site only. All mail order sales will be delivered via common carrier or electronically via the Internet. Petitioner would like to formally withdraw its sales tax registration in New York because, Petitioner states, it no longer has a physical presence in the state and no longer has employees or independent representatives soliciting sales in the state.

Since Petitioner solicits sales in New York State by the distribution of catalogs and other advertising materials, Petitioner could be required to register as a vendor under Section 1101(b)(8)(i)(C)(II) of the Tax Law if it had an additional connection with New York State which satisfies the nexus requirement of the United States Constitution. Petitioner's nexus with New York State ended when it no longer had employees or independent sales representatives working on its behalf in the State and had no other physical presence in the State. Assuming Petitioner maintains no other physical presence or contact in New York, as outlined in Section 526.10(a)(4)(ii) of the Sales and Use Tax Regulations, Petitioner is no longer required to be registered or to collect tax.

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Petitioner may surrender its Certificate of Authority and file its final sales and use tax return in accordance with the guidelines set forth in Sections 533.1 and 533.3 of the Sales and Use Tax Regulations.

DATED: June 26, 2002

/s/  
Jonathan Pessen  
Tax Regulations Specialist IV  
Technical Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.