

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

TSB-A-03(14)S
Sales Tax
April 4, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S010221D

On February 21, 2001, the Department of Taxation and Finance received a Petition for Advisory Opinion from The McKenzie Institute, Inc., 600 East Genesee Street, Suite 124, Syracuse, NY 13202. Petitioner, The McKenzie Institute, Inc., provided additional information with respect to the Petition on November 12, 2002.

The issue raised by Petitioner is whether it is required to collect sales tax on its sales of course manuals, educational CD-ROMs, slides, handbooks, consumer brochures, and polo and denim shirts.

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

Petitioner is a not-for-profit organization that sponsors seminars throughout the United States to educate physical therapists, medical professionals and the public in the concepts, benefits and principles of mechanical therapy and the treatment of mechanical disorders, and to promote research of these concepts and treatments. Petitioner has been issued an Exempt Organization Certificate by the Department of Taxation and Finance pursuant to Section 1116(a)(4) of the Tax Law.

Petitioner takes orders for the sale of course manuals, slides, handbooks, consumer brochures, and polo and denim shirts at its seminars and through the mail. The seminars are held periodically in various locations, both within and without New York State, for periods of three to four days. The merchandise is not displayed at the seminars. Attendees may submit orders for merchandise which will be filled and shipped from Petitioner's main office in Syracuse, New York. Educational CD-ROMs will also be sold via the Internet. Petitioner provides an "on-site" display for sales of the merchandise at its annual conventions which are held at various locations throughout the world, including different locations in the United States approximately every third year.

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. . . .

Section 1105(a) of the Tax Law imposes tax upon:

The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1116 of the Tax Law provides, in part:

Exempt organizations. (a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

* * *

(4) Any corporation, association, trust, or community chest, fund, foundation, or limited liability company, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition

* * *

(b) Nothing in this section shall exempt:

(1) retail sales of tangible personal property by any shop or store operated by an organization described in paragraph (4), paragraph (5) or paragraph (6) of subdivision (a) of this section. . . .

Section 529.7(i) of the Sales and Use Tax Regulations provides, in part:

Sales by exempt organizations. (1) Except as provided in paragraphs (2) through (4) of this subdivision, sales of tangible personal property and services by exempt organizations are exempt from the sales and use tax.

(2) Retail sales of tangible personal property made by any shop or store operated by an exempt organization described in section 1116(a)(4), (5) or (6) are subject to the sales and use tax. A shop or store as used in this section includes any place or establishment where goods are sold from display with a degree of regularity, frequency and continuity as well as any place where sales are made through a

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temporary shop or store located on the same premises as persons required to collect tax. Vending machines alone do not constitute a shop or store. However, where vending machines are located in a defined area devoted to selling tangible personal property, then sales from such vending machines constitute sales from a shop or store.

Opinion

National Wildlife Federation, Adv Op St Tx Comm, March 26, 1986, TSB-A-86(11)S concluded that an organization qualifying for exemption under Section 1116(a)(4) of the Tax Law would not be required to collect sales tax on its mail order sales since such sales are not considered sales by a shop or store.

Practising Law Institute, Adv Op St Tx Comm, April 7, 1999, TSB-A-99(17)S concluded that the Institute was making sales at a shop or store within the meaning and intent of Section 1116(b)(1) of the Tax Law and Section 529.7(i) of the Sales and Use Tax Regulations when making “on-site” sales of books and materials at lecture programs held in New York and at its Conference Center. Therefore, the Institute was required to collect and remit sales tax on its “on-site” sales. The Institute was not required to collect sales tax on its mail order sales since they were not through a shop or store.

In this case, Petitioner is an exempt organization as described in Section 1116(a)(4) of the Tax Law. Petitioner displays and sells course manuals, slides, handbooks, consumer brochures, and polo and denim shirts on-site only at its annual convention held in various locations throughout the United States and internationally. At all other seminars, held periodically in various locations in New York and throughout the country, Petitioner will take orders for the merchandise but does not display the merchandise on-site. In addition, Petitioner’s course manuals, slides, handbooks, consumer brochures, and polo and denim shirts may be ordered by mail. An educational CD-ROM is also sold via the Internet.

Petitioner will not be considered to be making sales by a shop or store within the meaning and intent of Section 1116(b)(1) of the Tax Law and Section 529.7(i) of the Sales and Use Tax Regulations when making sales at its annual conventions, were the convention held within New York. The infrequent occasions when the annual convention might be held in New York evidence no degree of continuity or regularity so as to make the sales occurring at the convention sales by a shop or store. Taking orders for sales at any of its seminars held within New York, with fulfillment therefor from its offices in Syracuse, New York, is similar to making door to door sales, or mail order or telemarketing sales, none of which sales are subject to tax when performed by an exempt organization. See Junior Achievement of Western New York, Inc., Adv Op St Tax Comm, April 9, 1984, TSB-A-84(13)S; and National Wildlife Federation, *supra*. Petitioner, therefore, will not be required to collect and remit sales tax on such sales of course manuals, slides, handbooks,

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consumer brochures, and polo and denim shirts in New York. Petitioner also will not be required to collect and remit sales tax on its mail order sales. See National Wildlife Federation, supra, and Practising Law Institute, supra. Moreover, Petitioner will not be required to collect sales tax on sales of educational CD-ROMs via the Internet.

DATED: April 4, 2003

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