

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

TSB-A-09(1)S  
Sales Tax  
January 2, 2009

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S081002B

On October 2, 2008, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]

The petition asks whether amendments to Section 1116 of the New York State Tax Law, which took effect on September 1, 2008, relating to the collection of State and local sales and compensating use tax on retail sales of tangible personal property made by remote means, are applicable to [REDACTED] ("Petitioner"), a New York fraternal insurance company.

It is concluded that the amendments to §1116 of the Tax Law apply to Petitioner, and that Petitioner is required to collect and remit sales and compensating use tax on retail sales of tangible personal property made by remote means.

**Facts**

Petitioner is a fraternal insurance company licensed under Article 45 of the Insurance Law of the State of New York. Petitioner sells annuity products in New York State. Individuals who purchase those annuity products become members of Petitioner's organization and then qualify for various benefits provided by Petitioner, including the ability to purchase various books and publications at a member discount. These materials are purchased by members from Petitioner by remote means and shipped directly to them by the publisher or distributor, not by Petitioner. Petitioner does not operate a store, carries no inventory of these materials, and before September 1, 2008, did not collect sales tax on any of these sales transactions. Petitioner operates a Web site through which various products are offered for purchase at discounted prices by calling a telephone number. The Web site states in part:

[Petitioner] offers Christian materials at discounted prices. [Petitioner's] members can order Bibles, Christian music, videos, books, gifts and more at an advantage of 35% off of the retail price and with free shipping. To place an order, call [telephone number] with the title and author or ISBN number of the book, or with the description or product code for other items.

Petitioner is certified by the Tax Department as an exempt organization under §1116(a)(4) of the Tax Law.

**Opinion**

**Issue 1: Are the sales subject to Tax Law Section 1116(b)?**

Section 1116(b) of the Tax Law, as amended by Chapter 57 of the Laws of 2008, provides, in part:

Nothing in this section shall exempt:

(iii) retail sales of tangible personal property and sales, other than for resale, of those services by that organization, made with a degree of regularity, frequency, and continuity by remote means, such as by telephone, the internet, mail order or otherwise; . . .

Section 1116(b) applies to any sales of tangible personal property where the sale is made by remote means, such as by telephone, mail order (including email), over the Internet, or by other similar methods, provided the exempt

organization makes such sales with a degree of regularity, frequency, and continuity. Internet sales include any sales effected via the Internet. These could be sales made from an exempt organization's online or virtual store, or through the organization's Web site.

The fact that Petitioner does not operate a store or carry inventory is irrelevant. The sales described are subject to tax under Tax Law §1116(b) whether or not they are made from a shop or store, provided that the sales are made with any degree of regularity, frequency, or continuity. If Petitioner operates its Web site on a continuous basis, it appears that sales of tangible personal property made through Petitioner's Web site are made with a degree of regularity, frequency, or continuity, and thus are subject to tax.

## **Issue 2: Does Insurance Law Section 4524 exempt Petitioner from New York Sales Taxes?**

Section 4524 of the Insurance Law provides:

Every society organized or licensed under this article is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax, other than taxes on real estate and office equipment.

Petitioner contends that Tax Law §1116(b), to the extent it requires Petitioner to collect and remit certain sales taxes, is in direct conflict with Insurance Law §4524, which exempts fraternal insurance companies licensed under Article 45 of the Insurance Law from State and local taxes. However, a careful reading of Insurance Law §4524 reveals that it is not the organization itself, but rather, "all of its funds" that are exempt from "all and every...tax..." New York State and local sales taxes are not taxes imposed on an organization's funds. It is the purchaser who is required to pay the sales tax and who bears the legal liability for doing so. The vendor's only obligation is to collect and remit the tax. Any person who is required to collect sales tax is also personally liable for the tax imposed, collected, or required to be collected under the Sales Tax Law. See Tax Law §1133 and 20 NYCRR 525.2(a)(4). The sales taxes collected by Petitioner from its customers are not Petitioner's funds. Rather, sales tax is paid to the person required to collect it as trustee for and on account of the State. See Tax Law §1132(a)(1).

Accordingly, Petitioner must collect and remit tax on any retail sales of tangible personal property made to its members by remote means, provided the sales are made with a degree of regularity, frequency, and continuity in accordance with Tax Law §1116(b). If it has not already done so, Petitioner must also register for sales tax purposes and obtain a *Certificate of Authority*, which authorizes the organization to collect State and local sales and use taxes on its taxable sales.

DATED: January 2, 2009

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Jonathan Pessen  
Director of Advisory Opinions  
Office of Counsel

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.