

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-16(23)S
Sales Tax
July 8, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S150617A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether his business of CPR instruction requires either an assumed name certificate and/or a Certificate of Authority to collect New York State and local sales taxes.

We conclude that Petitioner is required to obtain a Certificate of Authority if he will be selling tangible personal property or services subject to New York State and local sales taxes.

Facts

Petitioner intends to open a business as a sole proprietor under an assumed business name, and asks whether he must obtain a “doing business as” or a sales tax Certificate of Authority, or both. Petitioner’s business will consist of in-person instruction in cardiopulmonary resuscitation (“CPR”) and first aid to members of the general public. The charge for the training will also include a training manual. The training manual may also be separately offered for sale.

Analysis

Preliminarily, it is not within the scope of the Department’s authority or expertise to opine about whether an assumed name certificate (commonly known as a “doing business as” or d/b/a) is needed for a particular business. Petitioner may want to contact the Department of State for information on assumed name certificates.

Petitioner must obtain a sales tax Certificate of Authority if he intends to sell any taxable tangible personal property or taxable services. As relevant here, Tax Law § 1132 defines a person required to collect sales tax as “every vendor of tangible personal property or services.” Every person required to collect sales tax must file a Certificate of Registration with the Commissioner at least 20 days prior to commencing business or opening a new place of business. The provision of in-person CPR and first-aid training is not among the services subject to sales tax. If Petitioner provides a training manual with the training for no additional charge, the training manual would be considered to be an integral component of the broader service and Petitioner would not be considered to be selling tangible personal property subject to sales tax. *See* TSB-A-16(6)S. Accordingly, because Petitioner would not be selling tangible personal property or services subject to sales tax, he would not be required to obtain a Certificate of Authority. However, he would be required to pay sales tax on his purchase of the training manuals and could not claim the resale exemption. *See* 20 NYCRR § 526.6(c)(7).

If Petitioner separately charges for the training manuals, or sells the training manuals to persons who do not attend the in-person training, Petitioner would be selling tangible personal property subject to sales tax. Under these circumstances, Petitioner would be required to apply for a Certificate of Authority at least 20 days prior to commencing business. Furthermore, Petitioner would be required to collect sales tax from his customers on sales of the training manuals, file periodic sales tax returns and remit the tax on his sales to the Department. Petitioner also would be able to claim the resale exclusion for purchases of any training manuals that he intends to sell separately to his customers. Petitioner should timely provide the vendor of the training manuals a properly completed Form ST-120 *Resale Certificate* in order to purchase the training manuals exempt from sales tax. If Petitioner purchases training manuals for resale that are later provided to students of his training class without charge, or makes another taxable use of the training manuals, Petitioner must pay sales tax at the time of such use and remit it to the Department with the sales tax return covering the period in which the taxable use occurred. *See* 20 NYCRR § 531.3(a)(2).

DATED: July 8, 2016

/S/

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.