

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

TSB-A-17(21)S
Sales Tax
August 9, 2017

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S150821A

The Department of Taxation and Finance received a Petition for Advisory Opinion from Petitioner [REDACTED] (Petitioner). Petitioner asks about the sales taxability of its webinar and live stream products, and certain related optional services. We conclude that the webinar and live stream products are not taxable, but two of the optional services are subject to State and local sales tax.

Facts

Petitioner's cloud-computing products offer a customer the ability to make live and recorded events available to the customer's clients and members through Petitioner's web platform. In that way, Petitioner's customers are able to make presentations, such as those at academic conferences, company meetings, lectures, training sessions, and continuing education (CE) conferences, available remotely to audiences. Petitioner's major customers include member organizations and industry-specific associations. Petitioner's customers or their clients develop the content of the presentations.

Petitioner's two main products are built around two different types of on-line presentations – webinars and live streams. Webinars are presentations that are presented exclusively online (i.e., no live audience). Webinars can range from an event where there is a single presenter or a single session, to conference webinars that involve multiple presenters and sessions. With regard to Petitioner's webinar product, the customer is responsible for the necessary telecommunication services to connect the presentation (an audio feed, video feed, and any medium the presenter is using, such as a slideshow) to Petitioner's studios, where the feeds are captured, combined, and streamed over the Internet as an educational presentation on Petitioner's web platform. A live stream is an event held in front of a live audience. As part of its live stream product, Petitioner's camera crew and streaming team videotape the presentation and transmit it, using Petitioner's own telecommunication connection, to Petitioner's studios, from where it is then streamed over the Internet.

Both products offer at no additional charge interactive player technology that allows a user to access the video presentation and to interact with the presenter, as well as with other users, including the ability of the customer to verify that the viewer is paying attention, and the ability of the viewer to pose questions to the presenter or other viewers, and to text with them. Additional free optional services include editing (combining the audio and video streams to deliver a high quality presentation), viewer registration, viewer information reporting, and the services of an event moderator and an event planner.

In addition to these free optional services, Petitioner offers the following optional services for an additional charge:

Online Library - Petitioner's online library system includes a completely secure e-commerce system to allow for the purchase by non-attendees of the right to view video recordings of sessions. The online library also includes a user profile system, username and password account access, pre-conference handouts, streaming audio and slideshow software, audio, PDF download, note taking, discount systems for marketing and promotions, real-time statistics and reporting for administrator and users, a five star review system, education review comments, and post-conference CE accreditation and integration with certain social media sites. Petitioner's charge for its webinar product includes the posting of recordings of webinars to Petitioner's online library system. If the webinar requires any e-commerce transactions, a credit card processing fee is charged to cover credit card merchant fees incurred by Petitioner. Customers purchasing Petitioner's live streaming service must pay an additional charge for the on-line library product. For an additional charge, Petitioner also provides on-site or online evaluations as part of its on-line library product.

E-commerce Services – For its webinar product customers, Petitioner handles payments by viewers patronizing the customer's site. This service includes providing an accurate accounting to the customer of all monies received from the customer's viewers. Petitioner retains a 5% credit card transaction fee.

Technical Support Call Center – Petitioner offers a full Technical Support Call Center to handle any issues with its customers' viewers and/or speakers, including registration for customers' events, or technical difficulties. The Call Center is open one hour before, during, and one hour after the customer's event.

Sponsors and Advertising -- Petitioner's platform fully supports the addition of sponsors' logos or advertising from banners to video clips, before, after, or during the event. The customer sends Petitioner the logo, which can be its own or that of a sponsor. Petitioner then adds the logo to the banners and video clips.

Evaluations and CE Module - Petitioner's evaluation and CE module can handle evaluation (of the student or the instructor) and the CE needs for the customers' virtual audience. Petitioner provides all the technology for electronically taking tests, filling out evaluations of the instructors, creating a certificate of attendance, and managing the viewers' CE for the year, including tracking the viewers' CE activity.

Multi-Language - Petitioner can deliver webinars and live streams in multiple languages via a translation service. The translation is done in real time. Petitioner sends the live audio feed to a translator in real time, who translates it and immediately transmits it back to Petitioner, who makes it part of the live video feed.

Closed Captions - Closed captions can be added to any webinar.

Generally, Petitioner charges a flat fee for its webinar and live-stream products, with the amount of the fee depending on what additional services the customer requested. Where it is paid on a flat fee basis, Petitioner remits to the customer any fees it receives for granting access to the event, less a processing fee for the e-commerce services it provides. Petitioner is also paid for granting access to recordings of the live-streamed events either on a flat fee or a percentage of the revenue basis. The charge for any of the optional services discussed above sometimes is separately broken out on the invoice to the customer, but sometimes is not.

Analysis

Through its webinar and live-stream products, Petitioner provides its customers a means of making their presentations available for viewing over the Internet. There are two essential aspects to this service. First, the service allows the customers to upload the presentations to Petitioner's website or, in the case of live streams, assists the customer in transmitting the presentations to the website. Second, Petitioner deploys the necessary technology to allow viewers, using their own telecommunication connection, to securely access that content on its website, regardless of the device the viewer chooses to use (e.g., cellphones, tablets, or computers). This is not a taxable service. *See* Tax Law § 1105; TSB-A-16(6)S.

Petitioner's customers receive other benefits from the two products. The customers for both products are able to work with an event manager who has expertise in structuring webinars and live streams, along with the services of a moderator who will work with customers' viewers. Furthermore, Petitioner handles the registration of the viewers, and provides customers with reports about the viewers. Both products also make prewritten software available to customers' viewers that allows those viewers to interact with the presenter or other viewers during the presentations. Finally, Petitioner, as a part of its webinar product, makes a recording of the webinar available for viewing in its online library. Some of these additional aspects of Petitioner's live stream and webinar products, if sold separately, would be taxable, such as the access to prewritten software. *See* Tax Law §§ 1101(b)(6), 1105(a). However, these additional services and software are always offered as part of Petitioner's live-stream and webinar products at no additional charge. Thus, their tax status is not separable from that of the live-stream and webinar products. *See Penfold v State Tax Commission*, 114 AD2d 696 (3d Dep't 1985). Because these additional services and software are ancillary to the main function of Petitioner's live-stream and webinar products, they do not suffice to make those products taxable.

Turning to Petitioner's optional products, the evaluations and CE module product is taxable because that product provides a customer's viewers with access to prewritten software that allows the viewers to demonstrate their attentiveness, take tests, fill out evaluations, and track their CE activity for the year. By giving the viewers the ability to use prewritten software at an additional charge, Petitioner is making taxable sales of tangible personal property in New York to the extent that the customers' viewers are using the prewritten software in New York. *See* Tax Law §§ 1101(b)(6), 1105(a); 20 NYCRR 526.7; TSB-A-08(62)S. Similarly, the

separate charge for the on-site or online evaluations optional component of the On-line Library product is also taxable as prewritten software. *See Id.* Accordingly, Petitioner must separately state the tax for those products on any invoice or memorandum of sale given the customers and collect tax based on the proportion of the customers' viewers who give New York addresses in their CE information. If Petitioner sells the webinar or live stream product with these optional products and does not break out a separate charge for the optional products, the entire charge is taxable. *See Tax Law § 1132(c); 20 NYCRR 527.1(b); and TSB-A-15(36)S.*

Petitioner's charges for its remaining optional services are not subject to sales and use tax.

DATED: August 9, 2017

/S/

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