

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether the sale of the memberships that allow purchasers to make discounted purchases would be subject to New York State and local sales taxes if the memberships are sold to tax exempt organizations. We conclude that sales of such memberships to exempt organizations are not subject to sales tax.

Facts

The Petitioner is an arts and crafts store with numerous locations throughout the United States. Petitioner sells annual memberships to customers for \$39.95 a year. The annual membership fee entitles the customer to a percentage discount on each item purchased from Petitioner. Members also can apply for rebates (up to \$25.00 per quarter) for classes and family entertainment.

Analysis

Membership fees that entitle the member to purchase tangible personal property or services at a discount are subject to sales tax because they are considered to be a prepayment for discounted property or services. *See* TSB-A-92(66)S; TSB-A-81(20.1)S.

Petitioner correctly acknowledges that its sales of annual memberships generally would be subject to sales tax. However, purchases by the entities described in Tax Law § 1116(a) are exempt from State and local sales taxes. Accordingly, sales of Petitioner’s annual memberships to customers that qualify as exempt organizations under Tax Law § 1116(a) would not be subject to sales tax, provided that the exempt organization is the direct purchaser and payor of record, and the organization provides Petitioner with a properly completed exempt organization certificate. *See* 20 NYCRR 529.7(h)(2). Petitioner must retain documentation of that exemption. *See* 20 NYCRR 533.2(d); TB-ST-770 – *Recordkeeping Requirements for Sales Tax Vendors*.

DATED: August 20, 2024

/s/

MARY ELLEN LADOUCEUR
Principal Attorney

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.