

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-99(17)S  
Sales Tax  
April 7, 1999

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S981221C

On December 21, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Practising Law Institute, 810 Seventh Avenue, New York, New York 10019.

The issue raised by Petitioner, Practising Law Institute, is whether mail order sales of books and materials by a tax exempt organization become subject to sales tax where the organization operates a "shop or store" from which taxable sales of books and materials are carried out.

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

Petitioner is a nonprofit educational organization chartered by the Board of Regents of the University of the State of New York on June 17, 1938. Petitioner provides the legal community with continuing professional education through lecture programs and publications. Petitioner is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code and from sales and compensating use tax under Section 1116(a)(4) of the Tax Law. Petitioner is headquartered in New York City with offices in California.

Petitioner derives most of its income from membership dues, program fees and the sale of publications. In 1997, Petitioner received approximately \$23.3 million from these sources. Of that amount, program fees accounted for \$13.7 million, dues \$1.5 million and \$8.1 million was from the sale of Petitioner's various books and materials. Participation in Petitioner's programs as well as its sales of books and other materials primarily result from solicitation through direct mail advertising in the form of brochures and catalogues. In 1997, Petitioner distributed more than 7 million pieces of direct mail advertisements throughout the world.

Last year, Petitioner conducted over 200 educational seminars and programs throughout the country for the legal community and allied professionals, attracting over 21,000 participants. Prior to 1990, these seminars and programs were held at various hotels and conference facilities within and without the State. In 1990, Petitioner opened its Conference Center in New York City. About one-half of Petitioner's programs, workshops and seminars now take place at the Center each year. The rest continue to be held at various hotels and conference facilities within and without New York State, as well as "on-line" through Petitioner's Internet Web site.

Petitioner publishes numerous books, authored by experts in their respective fields, audio/visual cassettes, CD-ROM materials and other publications. In 1997, Petitioner introduced 178 new titles and currently maintains an inventory of 560 titles available for sale. Petitioner's

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books and materials may be ordered by mail (including e-mail), phone or fax. Orders submitted by such means, which account for over 97.5% of its total sales, are routed to an independent fulfillment house in Michigan, which ships the order by U.S. mail or by common carrier directly to the customer.

Petitioner's books and materials are also offered for sale "on-site" at the various seminar/program locations held throughout the country as well as at Petitioner's headquarters in New York City. Less than 2.5% of its total sales, or less than \$200,000, were derived from "on-site" purchases. Of that number, approximately \$102,000 was derived from "on-site" sales at the Conference Center in New York City and at other locations in the State. All sales made "on-site" at program locations and at Petitioner's Conference Center have been considered as sales from a "shop or store" and New York State and local sales tax have been collected for all such sales made within the State.

### **Applicable Law and Regulations**

Section 1116(b) of the Tax Law provides, in part:

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 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.

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**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.

Point-O-Woods Historical Society, Adv Op Comm T&F, June 25, 1997, TSB-A-97(36)S concluded that sales by an exempt organization were only taxable if made by a shop or store.

In this case, Petitioner is an exempt organization as described in Section 1116(a)(4) of the Tax Law. Petitioner offers books and materials for sale "on-site" at the various seminar/program locations held throughout the country as well as at Petitioner's headquarters in New York City. Such sales account for less than 2.5% of Petitioner's total sales. All sales made "on-site" at program locations and at Petitioner's Conference Center have been considered as sales from a "shop or store" and New York State and local sales taxes have been collected for all such sales made within the State. In addition, Petitioner's books and materials may be ordered by mail (including e-mail), phone or fax. Mail order sales account for over 97.5% of Petitioner's total sales. Orders submitted by such means, are routed to an independent fulfillment house in Michigan, which ships the order by U.S. mail or by common carrier directly to the customer.

Petitioner is 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 at program locations in New York and at its Conference Center. Petitioner is therefore required to collect and remit sales tax on its "on-site" sales. However, Petitioner's mail order sales are not sales by a shop or store. Accordingly, Petitioner is not required to collect and remit sales tax on its mail order sales. See National Wildlife Federation, supra, and Point-O-Woods Historical Society, supra.

DATED: April 7, 1999

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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