

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

TSB-A-13(1)S  
Sales Tax  
January 8, 2013

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S101022A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether it must collect sales tax on its receipts from the sale of an online driving training course. We conclude that Petitioner's service is not subject to sales tax.

**Facts**

Petitioner conducts online driver education courses that are regulated by the New York State Department of Motors (DMV) under its Points and Insurance Reduction Program (PIRP). A person who participates in one of Petitioner's accident prevention courses and passes an examination administered by Petitioner receives a certificate of completion from Petitioner, which entitles the person to points reduction on his or her driver's license and a reduction in auto liability and collision insurance premiums.

The DMV licenses the entities that conduct driver education courses under its PIRP and regulates the content of these courses and how the courses are to be administered. *See* 15 NYCRR §§ 138.4, 138.5, 138.6. To qualify under the PIRP, the course must provide a minimum of 320 minutes of instruction. *See* 15 NYCRR §138.4. Course instruction must address the following subject areas:

- (i) the concept of collision prevention, including a discussion of the factors involved in traffic situations;
- (ii) alcohol and drug use as a contributing factor in motor vehicle collisions;
- (iii) accident prevention techniques;
- (iv) the use of occupant restraints;
- (v) the risk factors involved in driver attitude and behavior such as speeding, reckless and aggressive driving, and improper lane use, etc.;
- (vi) traffic laws in New York State;
- (vii) physical and mental condition of drivers (i.e., age, vision, hearing, mobility, illness, fatigue, etc.);
- (viii) conditions and strategies of driving; and
- (ix) city versus suburban driving and rural versus expressway driving. *See* 15 NYCRR §138.4(d)(3)

The effectiveness of the course must be demonstrated by verifiable research documentation employing accepted research principles. *See* 15 NYCRR §138.4(e)(1). The

effectiveness of the course is measured in terms of reduced convictions or accidents or both, based on the course attendees (the treatment group) as compared to a matched group of motorists who did not attend an accident prevention course (the control group) during the same time frame. *See* 15 NYCRR §138.4(e)(5).

The DMV permits PIRP courses to be offered by alternative delivery methods such as the Internet that do not require students to be present in a classroom. *See* 15 NYCRR § 141.4(a). The content requirements for PIRP courses offered by alternative means (IPIRP courses) are identical to those for in classroom PIRP instruction. *See* 15 NYCRR § 141.5(b)(3). IPIRP courses must provide a minimum of 320 minutes of instruction. *See* 15 NYCRR § 141.5(b)(2).

Petitioner's IPIRP course is comprised of audio and video instruction. Some segments of the video component of the program include the presentation of a person expounding on driver safety. While the student may view the segments of an IPIRP course in any order and at any time, all segments of the course must be viewed by the student within 30 days in order for the person to be eligible for a certificate of completion for the course. *Id.*

By regulation, Petitioner's system of providing its IPIRP course must have a built in timer ensuring that 320 minutes of instruction have been attended and completed by the student. *See* 15 NYCRR § 141.8(a). The timer must prevent a student from advancing to the next section in less amount of time than it would take the average person to read or to be exposed to that page or section. *See id.*

DMV regulations require that Petitioner test students taking its IPIRP courses. *See* 15 NYCRR § 141.8(g). The test questions must be reviewed in advance by DMV. *See* 15 NYCRR § 141.5(c)(5). Petitioner's IPIRP course exam contains 25 questions on material presented in the course, which must be answered within fixed time limits. The student must obtain a passing grade of 75% or above on the exam in order to obtain a certificate of completion. *See* 15 NYCRR § 141.8(g)(1)(iii). The student has three chances to pass the exam.

DMV regulations require Petitioner to have security procedures that can confirm the person registered as the IPIRP student was the person who reviewed the course material and has taken the final exam. *See* 15 NYCRR §§ 141.8(e)(1), 141.8(g)(1)(vii). Petitioner's security system for its IPIRP course includes voice verification utilized at various stages throughout the course. The system collects an initial voice sample from the student and then at several checkpoints throughout the courses the system prompts the student to provide a voice sample to verify his or her identity.

DMV also permits the final examination for an IPIRP course to be taken in the classroom provided that (1) the location has been approved by DMV, (2) proctors who have an independent relationship with the course giver monitor the testing, (3) the student presents two forms of identification at the examination, and (4) the student signs in by executing a document that indicates agreement with the terms and conditions of the test procedure. *See* 15 NYCRR § 141.8(g)(2).

DMV regulations require that Petitioner provide its IPIRP students with access to toll free telephone lines so that they can communicate with customer service staff who are knowledgeable about policy, procedures, technical and content matters. *See* 15 NYCRR § 141.8(d)(1). Thus, for example, subject matter experts are available by phone to answer content related questions regarding defensive driving and collision avoidance. In addition, Petitioner is required by regulation to provide online assistance through the use of frequently asked questions and /or chat line access or equivalent real time communication. *See* 15 NYCRR § 141.8(d)(2).

Students can call and talk with advisors for answers to their safety course questions Monday through Friday 7:30 am to 5:30 pm and Saturday 8:00 am to 4:00 pm. Real time assistance is offered during business hours. Any customer inquiries/calls made after business hours are answered by an automated call center and are returned within four business hours. The advisors are extensively trained to be subject matter experts in driver safety.

Petitioner's standard written agreement with its student expressly states that the student is not purchasing or acquiring a license to use of software.

### **Analysis**

Provision of access to on-line educational materials that involves the transfer of prewritten software can constitute the licensing of taxable software. However, the provision of an on-line education course can constitute a nontaxable educational service if the product extends beyond the use of software. While Petitioner's presentation of the program may entail the employment of software, the only control that the student has over the presentation of the course is that he or she can determine the order in which course segments are presented and can stop and restart the course. Assuming without deciding that such minimal control constitutes a use of software by the student, the software is an ancillary component of a larger transaction that is not subject to sales tax.

A significant benefit provided by Petitioner's product is the awarding of a certificate to a student who has reviewed all course materials and passed a final exam. This certificate entitles the student by law to point reductions on his or her driver's licenses and to reduced automobile insurance premiums. The certificate is a component of the transaction evidencing that the use of software is an ancillary component of the transaction.

Petitioner has a teacher /student relationship with the individuals taking the course, which is very similar to the direct and personal relationship existing between an organization offering a driver education course in a classroom and its students. This relationship extends beyond an on-line link involving the use of software. Petitioner supplements its audio /visual presentation by offering telephone access to personnel who have expertise in motor vehicle safety and can answer substantive questions about the auto safety topics covered in the course and by offering similar instruction by an Internet chat line. Additional facts supporting the conclusion that any software use is ancillary to the provision of an education service that is not subject to sales tax are Petitioner's monitoring of the student's review of the course material and its online

proctoring of the final examination, duties similar to those performed by a formal educational institution as to attendance and examination requirements.

In conclusion, Petitioner's students are not purchasing software from it for purposes of sales tax, but rather they are paying Petitioner to participate in a course of study that is not subject to sales tax. *See* TSB-A-2006(5)S. Accordingly, Petitioner is not required to collect tax on the receipts for its IPIRP service.

DATED: January 8, 2013

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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.