

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

TSB-A-15(8)S
Sales Tax
March 19, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130716A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether the sale of used books, records, and related media by the Petitioner at its semi-annual sale is subject to the collection of New York State sales tax.

We conclude that Petitioner’s receipts from its semi-annual sale are subject to sales tax, and Petitioner must collect sales tax on those sales.

Facts

Petitioner submits the following facts: The Petitioner is chartered by a grant from the New York State Board of Regents of the University of the State of New York Education Department. The charter was granted in 1968. The charter provides that the Petitioner’s purposes are to: (i) maintain an organization of persons interested in books, libraries, facilities, and needs; (ii) stimulate gifts and desirable collections; and (iii) enrich the cultural advantages available to the citizens of [REDACTED] County. The charter further provides that the Petitioner shall be operated exclusively for educational purposes and no part of its earnings or net income shall inure to the benefit of any individual, and no officer, member or employee of the corporation shall receive or be entitled to receive any pecuniary profit from the operations thereof. Petitioner has been granted tax exempt status as a 501(c)(3) organization by the Internal Revenue Service. Petitioner also has an Exempt Organization Certificate from the Tax Department pursuant to § 529.7(f) of the Sales and Use Tax Regulations.

Petitioner collects used books, records, tapes and other media that are donated and then sold on a semi-annual basis. All of the used books, records, tapes and other media are donated by the public and become the property of the Petitioner. The donated items are sorted and stored through the help of volunteers in a warehouse owned by the Petitioner. In addition to using the warehouse as a place to accept, sort, arrange and store donated items, the warehouse is used by Petitioner for its meetings, and printing and occasional computer use. The primary use of the warehouse is to store donated items and display items during the semi-annual sale.

The items are collected over a 4-6 month period and the sale occurs from Saturday through Monday, generally for three consecutive weekends, with the possibility of a one-day

mid-week sale held at one point during that time frame. The sale usually occurs once in the spring and once in the fall. The exact dates are not pre-set but are chosen each year by the organization to avoid religious holidays, holiday weekends, or local college graduations and other yearly specific plans. The operational hours for the sale vary according to what the customers of the sale prefer and the availability of volunteers running the sale. The sale occurs in the warehouse, where items are displayed during the sale. After the sale, any unsold items are offered free to libraries, educational institutions, etc. Left over items are not held over for future sales. Libraries and non-profit groups are also allowed to take books or other materials at no charge before and after each sale. Occasionally there is a sale by word of mouth and very infrequently a commercial auction house is used for a special item. Petitioner recognizes that sales tax must be collected and paid on the rare occasion of a sale over the internet or by an auction house. Sporadic sales of book bags also occur at the local library.

The Petitioner uses the funds from the sale to provide yearly grants to the ██████████ County Public Library (the "Library") and to the Finger Lakes Library System (the "FL System"). The FL System is a cooperative library system, chartered in 1958 by New York State, to serve the public libraries in Cayuga, Cortland, Seneca, Tioga, and Tompkins Counties. To a lesser extent, occasional grants are made for educational purposes to the Library or the FL System staff or to provide grants to literacy related purposes of area community organizations or other grants to other area libraries. Costs associated with the book sales are also paid from the sale proceeds. The grants to the Library help relieve ██████████ County from the financial burden of supporting its library and the grants also relieve New York State from the financial burden of supporting the FL System. In fact, county appropriations for the Library provide no funds for collection acquisitions, and the book sale proceeds provide almost all of the acquisition monies available to the Library. Although not appropriated, the book sale proceeds function in lieu of government appropriations for acquisitions, because the Library could not function without a collection.

Analysis

Tax Law § 1105 provides that all sales of tangible personal property are subject to sales tax unless a specific exemption applies. The Tax Law also exempts certain sales by certain organizations that are exempt from sales tax. *See* Tax Law § 1116(a)(4); 20 NYCRR § 529.7(e),

However, the sales and use tax exemption for exempt organizations is not without limits. Tax Law § 1116(b) provides, in part:

(b) Nothing in this section shall exempt:

(1) (i) retail sales of tangible personal property by any shop or store operated by an organization described in paragraph (4), (5), or (6) of subdivision (a) of this section; (ii) sales, other than for resale, of services described in subdivision (b) or paragraph five of subdivision (c) of section eleven hundred five of this article by that organization whether or not at a shop or store; (iii) retail

sales of tangible personal property and sales, other than for resale, of those services by that organization, made with a degree of regularity, frequency, and continuity by remote means, such as by telephone, the internet, mail or otherwise; or (iv) retail sales of tangible personal property by lease or rental by that organization as lessor, whether or not at a shop or store (emphasis added).

See also 20 NYCRR § 529.7(i).

A “shop or store” includes “any place or establishment where goods are sold from display with a degree of regularity, frequency and continuity” The sale of tangible personal property from displays at continuous and scheduled intervals is subject to sales tax, because such locations would constitute a shop or store. *See* TSB-A-97(36)S. Sales that are held sporadically and infrequently (for example, sales held on only a few days over the course of a year, and on no particular schedule) will not be considered sales from a shop or store. *See* TSB-A-13(29)S.

Petitioner’s semi-annual books sale at the warehouse offers books for sale from display, and is conducted with sufficient regularity, frequency and continuity to be a sale from a shop or store, requiring the collection of sales tax. The sales are conducted at the same location, year after year. The sales are held twice per year, over the course of several weekends. Although the petition states that the dates for the sales, as well as hours of operation for the sales, are not pre-set, its website advertises regular “May and October” book sales. Moreover, the sale dates do not consist of only a few days during the year. For example, Petitioner’s website lists the announced dates for the May 2014 sale as beginning “Saturday, May 3, at 8:00 AM, and continues May 4 & 5, 10-12, and 17-20.” A sale that takes place in the same location for several weekends in both the Spring and Fall seasons from year to year is conducted with sufficient regularity, frequency and continuity to constitute a sale from a “shop or store.” Petitioner must, therefore, collect State and local sales tax on its sales at the semi-annual book sales at the warehouse.

Petitioner also states that it occasionally makes sales by “word of mouth.” If an exempt organization operates a shop or store and also makes retail sales of similar tangible personal property other than at its shop or store, those additional sales are considered to be made from its shop or store. *See* 20 NYCRR § 529.7(i)(2)(ii). Because we conclude that Petitioner is operating a “shop or store” for purposes of its Spring and Fall book sales, its other sales, including occasional sales advertised by “word of mouth,” would be considered to be made from a shop or store and, therefore, subject to sales tax. *See* TSB-M-08(15)S.

Petitioner states that sales tax is collected on its sales from a commercial auction house and remote sales made over the Internet. As stated above, because Petitioner is operating a shop or store for purposes of its Spring and Fall book sales, the sales made at a commercial auction house and over the Internet are also subject to tax. *See* 20 NYCRR § 529.7(i)(2)(ii). Petitioner must, therefore, continue to collect tax on these sales. Even if Petitioner’s semi-annual book sales were not made from a shop or store, the sales made by a commercial auction house would be subject to tax if those sales are made from display at a temporary shop or store by a person required to collect tax. *See* 20 NYCRR § 529.7(i)(2)(i). In addition, retail sales made over the

Internet or other remote means would be subject to tax if made with a degree of regularity, frequency and continuity. *See* Tax Law § 1116(b)(1)(iii).

Finally, Petitioner states that sporadic sales of book bags are made from the local library. If these items are on display and available for purchase on a regular and continuous basis, (such as during regular library hours), they would be sales made from a shop or store and, thus, subject to sales tax.

DATED: March 19, 2015

/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.