

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

TSB-A-86(5)S  
Sales Tax  
January 16, 1986

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850528B

On May 28, 1985, a Petition for Advisory Opinion was received from Erie Community College City Campus FSA, Inc., 121 Ellicott Street, Buffalo, New York 14203.

The issue raised is whether purchases by students from a college bookstore, which purchases are authorized by certain governmental entities, are subject to sales tax.

Petitioner states that some of its students receive aid towards their purchases of textbooks and study material under grants from one of four governmental agencies, namely: PELL Grants, the Trade Readjustment Act (TRA), the Veterans Administration (VA), and the Office of Vocational Rehabilitation (OVR). PELL, TRA and VA are administered by the Federal government; OVR is a governmental agency of New York State.

Sales to TRA, VA and OVR grantees, respectively, follow similar procedures. The bookstore receives individual vouchers for each student, which state the amount of the grant and specify the materials covered by the authorization. When the student has charged purchases equal to the awarded allowance, the college or the store bills the grantor, who sends a check either to the college business office or directly to the bookstore.

PELL administers all Federal grants, loans and college work-study programs. This agency sends eligibility information and vouchers, which combine tuition and book grants, to Petitioner's business office. There, a list of the PELL recipients' names and book awards is prepared and forwarded to the book store. The store, after certifying the expenditure of each allowance, returns the list and is issued an individual check in the amount of each student's award by the college business office, who is reimbursed by PELL.

In no instance do any of the four governmental agencies place purchase orders with Petitioner in these transactions, enter into formal sales agreements with Petitioner or take title to the books and study material purchased.

Section 1101(b)(5) of the Tax Law, in relevant part, defines the terms "sale, selling or purchase" to mean "[a]ny transfer of title or possession or both [of tangible personal property], . . . in any manner or by any means whatsoever for a consideration, or any agreement therefor. . . ."

Pertinent parts of Section 1116(a) of Article 28 of the Tax Law state that any sale to any of the following [governmental entities] shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada) or political subdivisions where it is the purchaser, user or consumer, . . . .

(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, . . . .

To qualify for the exemption, a sale must have all three of the following elements:

- A. An order for goods or services must be placed by the governmental entity; and
- B. The bill for the goods or services must be prepared in the name of the entity; and
- C. Payment for the goods or services must be made by the entity to the seller. (See: Taxpayer Services Bureau Memorandum TSB-M-78(14)S, July 20, 1978).

PELL, TRA, VA, as well as OVR are government entities which as purchasers, users or consumers of property, are exempt from taxation.

However, when administering book grants, these agencies, although payors of record, do not order, acquire title to, or take possession of the property. Therefore, it cannot be held that any document authorizing Petitioner to sell designated categories of merchandise to a grantee represents an order for the purchase of goods by a government entity. (Morrell's Tailors and Furriers, State Tax Commission Advisory Opinion, TSB-A-81(19)S).

Consequently, under the procedures described by Petitioner, a student's purchase of goods with awarded funds lacks element "A." of the above quoted conditions for exemption. Thus, the bookstore's receipts from such sales are subject to tax.

DATED: January 16, 1986

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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