

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

TSB-A-90 (13)S  
Sales Tax  
March 21, 1990

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891109B

On November 9, 1989 a Petition for Advisory Opinion was received from Excess Line Association of New York, 195 Broadway, 20th Floor, Suite 2003, New York, New York 10007.

The issue raised by Petitioner, Excess Line Association of New York, is whether it is an agency, instrumentality or public corporation of the State of New York exempt from the payment of sales and compensating use taxes within the meaning of Section 1116(a)(1) of the Tax Law.

Petitioner was created by an Act of the New York State Legislature (L. 1988, c. 630, §2, codified at New York Insurance Law §2130(a)). Petitioner is a not-for-profit advisory organization created to assist New York-licensed excess line insurance brokers (licensees) to comply with the many detailed and complicated features of New York's current excess line regulatory system; to protect persons seeking insurance in New York; to permit excess line insurance to be placed with reputable and financially sound unauthorized insurers; and to protect the revenues of New York.

Petitioner reviews, records and stamps excess line insurance (i.e. insurance obtained through licensed brokers from insurers that are not otherwise authorized in New York) documents required to be submitted under New York's Insurance Law. It issues a stamp on all declaration pages of insurance policies, cover notes or other insurance premium bearing documents, providing that it believes the excess line insurer from which the particular coverage was procured meets the minimum standards of eligibility imposed by New York law and the rules and regulations of the Superintendent of Insurance. In the event that it receives documents not meeting minimum standards, it notifies the Superintendent prior to stamping such documents.

Petitioner's sole present and future source of financial support is the stamping fee assessed on each declarations page, cover note or other premium bearing document submitted to it. This fee is paid by the member excess line licensee, which may collect the fee from the insured on whose behalf the licensee is procuring insurance. All New York excess line licensees are deemed by section 2130(a) of the Insurance Law to be members of Petitioner.

In the event Petitioner is dissolved, its Board of Directors are required to transfer its remaining assets to another non-governmental organization established for the same or similar purposes as Petitioner or, if no such organization exists, to one or more charitable organizations selected by the Board of Directors.

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On September 29, 1989 Petitioner applied to the Internal Revenue Service for recognition that it is a tax-exempt organization as described in section 501(c)(6) of the Internal Revenue Code of 1986, as amended.

Section 1116(a)(1) of the Tax Law exempts from sales and compensating use tax:

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, or where it is a vendor of services or property of a kind not ordinarily sold by private persons.

To be exempt from the payment of sales and use tax, Petitioner would have to be exempt under one of the provisions of Section 1116 of the Tax Law or a specific provision of the Insurance Law.

Petitioner is not owned by the State. It is organized for the purpose of operating a board of trade rather than for some public purpose as is usually the case with public corporations. This is further evidenced by the fact that Petitioner has applied to the Internal Revenue Service for exemption from Federal income tax under § 501(c)(6) of the Code. Section 501(c)(6) exempts:

Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Finally, the implementing statute usually specifies that an entity is a governmental agency or a public corporation if it is intended to be one by the legislature. No such provision is found in the applicable statutes. Consequently, Petitioner is not an organization set forth in Section 1116(a)(1) of the Tax Law that is exempt from the New York State or local sales tax or compensating use tax.

DATED: March 21, 1990

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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