

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

TSB-A-99(12)S
Sales Tax
March 1, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S981008A

On October 8, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Regional New York, American Institute of Banking, Inc., 237 Main Street, Suite 300, Buffalo, New York, 14203. Petitioner submitted additional information relating to the Petition on November 2, 1998.

The issue raised by Petitioner, Regional New York, American Institute of Banking, Inc., is whether sales of its textbooks are exempt from sales tax under Section 1115(a)(34) of the Tax Law.

Petitioner submitted the following facts as the basis of this Advisory Opinion.

The American Institute of Banking (AIB) is the educational division of the American Bankers Association, headquartered in Washington, DC. There are fifty-seven AIB chapters throughout the United States. Petitioner, a regional chapter of AIB, is a 501(c)(3) tax exempt, not-for-profit professional school for finance industry employees. It provides a course of study that leads to diplomas and certificates.

Petitioner is not an institution of higher education recognized and approved by the Regents of the State University of New York. However, Petitioner receives college credit recommendation from the American Council on Education (ACE). ACE evaluates courses offered by organizations that provide courses to their employees, members or customers and makes credit recommendations for formal educational programs. The credit recommendations are intended to guide colleges and universities as they consider awarding credit to persons who have successfully completed college level instruction. Petitioner has articulation agreements with eight of the local colleges and universities in the Western New York Region, as well as the State University of New York Empire State College. Many of the courses offered by Petitioner have been recommended by ACE and accepted for college credit by regional colleges and the State University of New York Empire State College. Students who complete Petitioner's courses and wish to receive college credit must make a formal request for credit with the college or university from which they wish to receive credit.

Applicable Law and Regulations

Section 1105 of the Tax Law imposes a tax on:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1115 (a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred ten:

(34) Textbooks purchased by full and part time college students for their courses; provided, however, that upon purchase such a student shall present a valid student identification card, and such a textbook shall be required for a course being taken by such student at an institution of higher education. For purposes of the subdivision the term:

(i) "Textbooks" includes only those books specifically written, designed or produced for educational, instructional or pedagogical purposes.

(ii) "Institution of higher education" shall mean any institution of higher education, recognized and approved by the regents of the university of the state of New York or accredited by a nationally recognized accrediting agency or association accepted as such by the regents of the university of the state of New York, which provides a course of study leading to the granting of a post-secondary degree, certificate or diploma.

Opinion

Petitioner is a not-for-profit school of continuing education for the banking industry which offers courses which may lead to a certificate, degree or diploma. Petitioner's courses have been evaluated by ACE, which makes recommendations which are used by colleges and universities to determine whether a student may receive college credit for courses taken at other institutions. Many of Petitioner's courses are recommended for college credit by ACE and accepted at colleges and universities, including the State University of New York Empire State College.

Section 1115(a)(34) of the Tax Law provides an exemption from sales tax for purchases of college textbooks for courses given at institutions of higher education. For purposes of Section 1115(a)(34), an "institution of higher education" is any institution of higher education recognized and approved by the Regents of the State of New York, or accredited by a nationally recognized accrediting agency or association. Petitioner has indicated that it is not recognized and approved by the Regents of the State of New York. In addition, Petitioner is not accredited by a nationally recognized accrediting agency. ACE is an evaluation agency which makes recommendations for college credit for courses, but is not an accrediting agency. Although many of Petitioner's courses are accepted for college credit when formally transferred to a college or university, Petitioner does not meet the accrediting test required by Section 1115(a)(34)(ii). Therefore, Petitioner's sales of

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textbooks to students enrolled in its courses for use in its courses do not qualify for the exemption from sales tax for college textbooks under Section 1115(a)(34) of the Tax Law.

DATED: March 1, 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.