

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

TSB-A-92 (62) S
Sales Tax
August 14, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S920414A

On April 14, 1992 a Petition for Advisory Opinion was received from Tau Delta Phi Fraternity, Inc., P.O. Box 4169, Great Neck, New York 10027-4169.

The issue raised by Petitioner, Tau Delta Phi Fraternity, Inc. is whether the parent organization of a national fraternity is required to collect tax from its subordinate chapters when it sells them tangible personal property.

A national fraternity has its parent organization headquartered in New York State. The parent organization intends to purchase tangible personal property from various vendors and then resell such tangible personal property to the chapters and individual members for their use.

Items to be purchased by the parent organization and resold to the individual members or chapters include membership certificate cards, pins, pamphlets, jewelry, emblem supplies, chapter supplies, manuals, ritual equipment and chapter certificates.

When individual members join the fraternity chapters, they are charged a flat membership fee and receive a small membership I.D. card, pin, certificate and pamphlet. These items are incidental to the pledge process and represent a minimal, incidental portion of the pledge fee. A pledge is able to refuse to accept these items, but the pledge fee will not be reduced thereby. If individual members quit or are suspended, several of the aforementioned items must be returned to the organization. If a chapter's charter were revoked, several of the chapter's items must be returned to the parent organization.

Section 1101(b)(4)(i) of the Tax Law defines a retail sale as "[A] sale of tangible personal property to any person for any purpose, other than (A) for resale as such. . "

Section 526.6 of the Sales and Use Tax Regulations provides in part that:

(a) The term retail sale or sale at retail means the sale of tangible property to any person for any purpose, except as specifically excluded.

* * *

(c) Resale exclusion. (1) Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

* * *

(4) (i) Tangible personal property which is purchased and given away without charge, for promotion or advertising purposes is not purchased for resale. It is a retail sale to the purchaser thereof, and is not a sale to the recipient of the property.

Accordingly, where Petitioner sells tangible personal property, such as I.D. cards, pins, certificates and pamphlets, to individual members of fraternity chapters, such sales constitute a sale at retail in accordance with the meaning and intent of Section 1101(b)(4)(i) of the Tax Law and Section 526.6 of the Sales and Use Tax Regulations. Therefore Petitioner may purchase such items for resale without the payment of sales tax and must collect the appropriate sales tax from the individuals who purchase such items.

Similarly, where Petitioner sells such types of items to individual fraternity chapters who use them for their own purposes or who give such items to their members without charge in connection with the members' membership or pledge fees, Petitioner may purchase such items for resale without the payment of sales tax and must collect the appropriate sales tax from the chapters who purchase such items.

In instances where the Petitioner gives such items directly to chapters or members of chapters without charge or for a minimal charge, Petitioner would be liable for the use tax on said items in accordance with Section 1110 of the Tax Law.

DATED: August 14, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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