

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

TSB-A-09(40)S
Sales Tax
August 12, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S090518A

Petitioner [REDACTED], asks whether its payments to independent contractors who prepare its “e- newsletters” are subject to sales tax. We conclude that the charges are taxable because the independent contractors are performing an information service for Petitioner.

Facts

Petitioner is an internet company that provides specialized search capabilities and information to the engineering, manufacturing and related technical and scientific communities. Petitioner publishes various “e-newsletters” that are delivered by e-mail to users of its website who have subscribed to them. The e-newsletters are also available on Petitioner’s website. There is no subscription fee to receive the e-newsletters. The e-newsletters, which contain advertising, are designed to appeal to the engineering, technical, and industrial communities and focus on various product categories. Typical titles are “MEM’s Technology,” “Sensors & Switches,” “Building & Construction,” and “Coatings & Surface Engineering.” Petitioner owns the copyrights for the e-newsletters.

Each e-newsletter follows a similar format. Newsletter formats generally include “Industry Trends & Events,” content areas specific to the individual title (for example, the April 14, 2009 issue of “Sensors & Switches” had articles on “Level Transmitters, Electric and Electromagnetic Sensors, and Switches and Solenoids”), “Careers & Commentary,” “Diversions,” and a selected blog topic of the month entitled “Share Your Thoughts.”

An editor is responsible for preparing each e-newsletter. Some of the editors are independent contractors. The editor selects content that would allow a reader employed in the industry to do his or her job more effectively by keeping abreast of industry trends, new technologies, and new products. Petitioner’s editorial guidelines include eight or nine rules regarding the editor’s selection of content. The editors are instructed to search for and aggregate content from the electronic versions of trade publications from multiple publishers. Once the content is selected, the editor writes a headline and a short, five- to six-line paragraph, which, according to Petitioner’s editorial guidelines, “serves as * * * an introduction to the ‘owning/original’ source of content to be linked to.”

A Group Editor reviews and approves the content submitted to Petitioner by the independent contractor/editor, requests revisions, if needed, and approves finalized e-newsletter content for publication. Petitioner pays the editor a fee for each e-newsletter that the editor prepares.

Analysis

Tax Law section 1105(c)(1) imposes sales and use tax on the service of “[t]he furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons.” That section excludes from tax the sale of “information which is personal or individual in nature and which is not or may not be substantially

incorporated in reports furnished to other persons.” Here, in preparing the e-newsletters, the independent contractors working as editors are compiling information from the electronic versions of multiple trade publications. This compilation constitutes an information service under Tax Law section 1105(c)(1) (Sales Tax Reg. section 527.3[b][2][Example 4]). The personal and individual exclusion is not applicable because the articles are drawn from publicly available information on the internet (*Id.*; *Matter of the Petitions of Equifax Services, Inc.*, Tax Appeals Tribunal, July 21, 1988 [“The fact that the information was so widely accessible and derived from a single source precluded the service from being within the personal or individual exclusion”]). The editors’ summaries of the content found on the Internet do not suffice to exclude the service from the tax on information service (*Waste Resource Associates, Inc.*, Advisory Opinion, TSB-A-93(48)S, September 1, 1993).

DATED: August 12, 2009

/S/

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