

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

TSB-A-82(48)S
Sales Tax
December 30, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811201B

On December 1, 1981, a Petition for Advisory Opinion was received from Five Point Grocery, Richard and Mary Pugliese, 42 Park Place, Saratoga Springs, New York 12866.

The issue raised is whether a certain publication constitutes a periodical or newspaper for purposes of the sales tax imposed under Article 28 of the Tax Law.

Section 1115(a)(5) of the Tax Law exempts from the sales tax imposed under section 1105(a) thereof receipts from the sale of newspapers and periodicals. While the terms "newspapers" and "periodicals" are given no statutory definition, the Sales and Use Tax Regulations do contain the following explanation:

"(b) Definition of newspaper. (1) In order to constitute a newspaper, a publication must conform generally to the following requirements:

- (i) it must be published in printed or written form at stated short intervals, usually daily or weekly;
- (ii) it must not, either singly or, when successive issues are put together, constitute a book;
- (iii) it must be available for circulation to the public; and
- (iv) it must contain matters of general interest and reports of current events.

(2) Notwithstanding the fact that a publication may be devoted primarily to matters of specialized interest, such as legal, mercantile, financial, theatrical, political, religious, or sporting matters, nevertheless, if in addition to the special interest it serves, the publication contains general news, it is entitled to the classification of a newspaper.

. . . .

(c) Definition of a periodical. (1) In order to constitute a periodical, a publication must conform generally to the following requirements:

- (i) it must be published in printed or written form at stated intervals, at least as frequently as four times a year;

- (ii) it must not, either singly or, when successive issues are put together, constitute a book;
- (iii) it must be available for circulation to the public;
- (iv) it must have continuity as to title and general nature of content from issue to issue;
- (v) such issue must contain a variety of articles by different authors devoted to literature, the sciences or the arts, news, some special industry, profession, sport or other field of endeavor. . . . " 20 NYCRR528.6.

The publication at issue is entitled Saratoga Harness! Official Program, Features, News, (hereinafter "Saratoga Harness") and is published in printed form by Saratoga Harness Racing, Inc. In general, Saratoga Harness substantially consists of informational charts listing the past performance for each entry for each of the races held in a particular meet, together with information on how to read these charts. Additionally, general information regarding Saratoga Racetrack is provided, such as admission costs, seating cost and capacity, lost and found, and the like. Officers of the Saratoga Harness Racing Association, the Racing and Wagering Board, the State Tax Commission and similar entities are listed. The results of previous race meetings are charted, as is information concerning drivers' standings, as well as statistics on top drivers and trainers. Racing entries for subsequent meets are also charted. Information in a general advertising format, announcing post times, race dates, special promotions, bus schedules to the track, and the like are also included. Publication dates for Saratoga Harness coincide with each scheduled day of racing and each race meeting, and Saratoga Harness is apparently never published for any date when a race meeting is not scheduled. Additionally, there is generally a single signed article relating to some aspect of harness racing, with a portion of a single page given over to a number of very brief "articles, some no more than a single sentence, relating to sports and general news. Taken together, such items constitute approximately ten per cent of any given issue of Saratoga Harness. The publication is available to the general public at approximately forty locations within New York, as well as elsewhere in the United States and Canada. The publication does not, either singly or when successive issues are put together, constitute a book. The publication has continuity as to title and general nature of content from issue to issue.

Saratoga Harness was the subject of a previous Advisory Opinion (TSB-H-81(126)S), which held that the publication did not qualify as a "newspaper or periodical" for the purposes of the exemption provision contained in section 1115(a)(5) of the Tax Law. That Advisory Opinion held Saratoga Harness not to qualify because it did "not contain any statement as to the frequency of publication" and because "the items of general interest and reports of current events contained in most of the issues submitted are not substantial either in number or in length." The only change in the format of Saratoga Harness from its former state is that the publication now states the days on which it is published in its masthead. The second stated basis for the conclusion contained in the

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previous Advisory Opinion has not, however, been removed. Accordingly, the subject publication, as here described, does not constitute a newspaper or periodical within the meaning of section 1115(a)(5) of the Tax Law. Receipts from the retail sale thereof are thus subject to sales tax.

DATED: December 13, 1982

s/FRANK J. PUCCIA
Director
Technical Services Bureau