

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

TSB-A-85(57)S
Sales Tax
November 14, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850808A

On August 8, 1985, a Petition for Advisory Opinion was received from Brooklyn Metropolitan Real Estate News, 75-15 Jamaica Avenue, Woodhaven, New York 11421.

The issue raised is whether Petitioner's cost of producing a publication, which will contain only advertising by real estate brokers and the general public, is subject to sales tax.

Commencing in October 1985, Petitioner intends to publish once a month the "Brooklyn Metropolitan Real Estate News". Circulation will approximate fifty thousand copies, and distribution will be free of charge mainly from bulk drop locations at banks, stores and diners. The public may subscribe to the paper. At present, the mailing list represents less than one percent of the total circulation.

Petitioner's business will derive its revenue from the fees charged to advertisers for display ads and listings. Referral coupons included in the publication are distributed without charge to all Realtors who purchase advertisements.

Section 1105(a) of the Tax Law imposes a tax on the receipts from retail sales of tangible personal property. Section 1105(c)(1) of the Tax Law imposes a tax on receipts from the sale of the service of the ". . . furnishing of information by printed, mimeographed or multigraphed matter. . . but. . . excluding the services of advertising. . . ." Section 1115(a)(5) of the Tax Law provides for an exemption from sales and use tax with respect to "newspapers and periodicals".

The Sales and Use Tax Regulations define the terms "newspaper" and "periodical", in relevant part, as follows:

"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." 20 NYCRR 528.6(b).

"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)

each 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 NYCRR 528.6(c).

The term to "conform generally" means that the publication must meet all of the criteria generally. See Department of Taxation and Finance, Definition of Newspapers & Periodicals, January 23, 1979, TSB-M-79(3)S. Since Petitioner states that its publication will not include matters other than advertising material, it will not constitute either a "newspaper" or a "periodical"; nor will it qualify for exemption as a "shopping paper", which must be published at least 50 times a year. 20 NYCRR 528.6(d)(2)(ii).

Sales and Use Tax Regulations Section 526.6(c)(4) provides, in part, that:

(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... (iii) A resale certificate may not be used by the person making the purchases described in subparagraphs (i)... of this section for such purchases.

Consequently, Petitioners purchases of printing services and supplies necessary for the production of the publication, including inserts, are subject to tax.

Amounts billed to advertisers for listings and display ads constitute an advertising charge. These receipts are exempt from tax under the provisions of Section 1105(c)(1) of the Tax Law, quoted supra. See also State Tax Commission, Declaratory Ruling 80-01, February 8, 1980, TSB-H-80(22)S.

Petitioner explains that its subscribers will be charged a small amount per issue, not for the publication itself, but to cover first class postage and handling.

Section 1101(b)(3) of the Tax Law defines the term "receipt" as:

"The amount of the sale price of any property and the charge for any service taxable under this article, valued in money...without any deductions for expenses...and excluding the cost of transportation of tangible personal property sold at retail where such cost is separately stated in the written contract if any, and on the bill rendered to the purchaser." (Emphasis added)

Regulation 526.5(g)(3) provides that transportation charges shall be deemed to be separately stated if they can be computed from information appearing on the bill.

Regulation 526.5(g)(4) provides that to qualify for the exclusion, transportation charges must be reasonable in relation to prevailing established rates.

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However, handling costs billed to a customer are part of the taxable receipt. If postage, shipping or similar charges that would otherwise be exempt are combined with handling charges in a single amount, the entire charge becomes subject to sales tax. See Department of Taxation and Finance, Taxable Status of Charges for Transportation and Handling of Tangible Personal Property, September 10, 1984, TSB-M-84(13)S.

Thus, Petitioner must collect the applicable State and local sales taxes on any amounts billed to its subscribers which are designated either as "handling" charges, or as "postage and handling" charges.

Section 1134(a)(1) of the Tax Law provides, in relevant part, that "Every person required to collect any tax imposed by this article commencing business or opening a new place of business. . . shall file with the tax commission a certificate of registration, in a form prescribed by it, at least twenty days prior to commencing business or opening a new place of business, or such purchasing or taking of possession or payment, whichever comes first."

In such a case, Petitioner would be required to register as a vendor with the New York State Tax Commission.

DATED: October 28, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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