

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

TSB-A-87(43)S
Sales Tax
November 12, 1987

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S870220A

On February 20, 1987, a Petition for Advisory Opinion was received from R.C. Anderson Associates Inc., P.O. Drawer 160, Pittsford, New York 14534.

The issues raised are (1) whether Petitioner may purchase the printing of its publications for resale, (2) whether the subsequent sale by Petitioner of its publications is the sale of a newspaper or periodical which is exempt from sales tax under § 1115(a)(5) of the Tax Law and (3) whether the sale of a training video is subject to tax.

Petitioner publishes two monthly newsletters which have world-wide paid circulation to newspaper companies. One is the NIE (Newspaper in Education) Information Service with 300 subscribers; the other is the Circulation Idea Service with 725 subscribers. There are forty subscribers within New York State. The training video here at issue is a professionally produced video tape used to train paper carriers.

The NIE Information Service consists of approximately 8 pages devoted to showing newspaper publishers how to use their newspapers in local schools as an educational tool. The publications submitted contain news and articles of interest to newspaper carrier route managers.

The Circulation Idea Service is directed towards supplying newspaper publishers with ideas on how to recruit and retain newspaper carriers. The publication contains suggestions for contests as well as ideas which were successfully tried by some of its newspaper-subscribers.

Both the NIE Information Service and the Circulation Idea Service contain a minimal amount of camera ready artwork.

Section 1105(a) of the Tax Law imposes a tax upon "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article." However, section 1115(a)(5) of the Tax Law exempts newspapers and periodicals from the tax imposed under section 1105(a).

Section 528.6 of the sales tax regulations defines both newspapers and periodicals.

528.6 Newspapers and periodicals (Tax Law, § 1115[a][5]). (a) Exemption.
The sale of newspapers and periodicals is exempt from sales and compensating use tax.

(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.

(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; and

(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.

(2) A publication which may be known as or considered to be a newsletter may qualify as a periodical if it conforms to the above standards. Where a newsletter has no signed articles, but has a staff of writers who originally prepare articles, such publication will be considered to have articles by different authors. If a publication has been classified by the United States Postal Service as one which is entitled to second class mailing privileges, that fact will be considered in determining whether or not the publication is a periodical.

Section 526.6(c)(1) of the regulations provides as follows:

(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.

Issue 1

Pursuant to the provisions of regulation section 526.6(c)(1), the purchase of printing by Petitioner for its NIE Information Service and Circulation Idea Service qualify as a purchase for resale. Similarly, the purchase of the training video tape qualifies as a purchase of property for resale.

Accordingly such purchases are exempt from tax when Petitioner presents to its printer and tape supplier properly completed Resale certificates (Form ST-120).

Issue 2

The NIE Information Idea Services and the Circulation Idea Services do not meet the criteria for qualification as newspapers. However, they do qualify as periodicals within the meaning of regulation section 528.6(c). As such, they are exempt from sales tax pursuant to section 1115(a)(5) of the Tax Law when sold by Petitioner.

Issue 3

The sale of training videos is the sale of tangible personal property within the meaning of section 1105(a) of the Tax Law. Since the training videos do not qualify as newspapers or periodicals, their sale by Petitioner is subject to sales tax. Petitioner is required to collect and remit sales tax on all training videos delivered within New York State.

DATED: November 12, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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