

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

TSB-A-88 (36) S  
Sales Tax  
July 20, 1988

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880212A

On February 12, 1988, a Petition for Advisory Opinion was received from Harmonic Research, Inc., 650 Fifth Avenue, New York, New York 10019.

The issue raised is whether Petitioner is providing an information service subject to tax under Section 1105(c)(1) of the Tax Law.

Petitioner is an investment advisor registered with the Securities and Exchange Commission. Petitioner offers three types of services: consultations, a telephone hotline, and newsletter subscriptions.

Section 1105(c)(1) of the Tax Law provides that a sales tax is imposed upon:

The furnishing of information by printed, mimeographed or multi graphed 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 ....

Section 527.3(a)(4) of the Sales and Use Tax Regulations provides, in part that "charges for credit information services, other than those that are transmitted orally, are subject to tax .... "Any fee for an oral report is taxable if the oral report is preliminary to the written report."

Both the consultations and the telephone hotline offered by Petitioner are oral reports that are provided for a fee. Neither service is succeeded by a written report. Accordingly, neither service is taxable within the meaning of Section 1105(c)(1) of the Tax Law.

Section 1115(a)(5) of the Tax Law exempts newspapers and periodical from the sales and use taxes of sections 1105(a) and 1110 of the Tax Law.

Sales and Use Tax Regulation Section 528.6 provides, in part:

(a) Exemption. The sale of newspapers and periodicals is exempt from sales and compensating use tax.

\* \* \*

(c)(1) 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 literatures, the sciences or the arts, news, some special industry, profession, sport or other field or 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.

(3) Nothing in this section shall be construed to exempt as a periodical the following:

- (i) advertising material, such as catalogs, flyers, pamphlets, and brochures;
- (ii) listings and compilations which constitute informational services;
- (iii) publications which are issued at stated intervals but which are books or parts of a book.

\* \* \*

Example 8: A weekly newsletter is comprised of four pages of various articles devoted to the automobile industry. Although the articles are not signed, they are prepared by an editorial staff. The publication is sold by subscription and single copies are also available. The newsletter contains no advertising. This newsletter constitutes a periodical. 20 NYCRR 528.6.

The third service offered by Petitioner is a newsletter which is published tri-weekly (18 times per year), does not constitute a book, either singly or when successive issues are put together, is available for circulation to the public, maintains continuity with respect to title and content from issue to issue, and each issue of which contains a variety of articles by seven different authors devoted to investment advice.

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Accordingly, the newsletter published by Petitioner is not subject to sales or use tax because it constitutes a periodical.

DATED: July 20, 1988

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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