

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

TSB-A-88(37)S
Sales Tax
July 20, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S880111B

On January 11, 1988, a Petition for Advisory Opinion was received from Sage Alternatives, Inc., 5820 Main St., Suite 500, Williamsville, New York 14221.

The issue raised is whether Petitioner's publication "Sage Advisory" is an exempt periodical as provided by § 1115(a)(5) of the Tax Law.

Petitioner states that it publishes its publication "approximately" on a quarterly basis. The publication is an economic commentary in which past events are reviewed and analyzed for subscribers. Petitioner has submitted copies of its publication for review. It is noted that the dates of the publications submitted by Petitioner indicate a seven month interval between the last two issues.

Section 1115(a)(5) of the Tax Law exempts "newspapers and periodicals." The definitions of the terms "newspaper" and "periodical" are contained in section 528.6 of the sales and use tax regulations which provides, in part:

(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.

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(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. (Emphasis supplied).

Upon review of Petitioner's publication, it is determined that it does not meet the criteria of an exempt periodical because the "Sage Advisory" is not published at stated intervals. While Petitioner has stated that his advisory is published "approximately" quarterly, it is apparent that such is not the case. Accordingly, the "Sage Advisory" is subject to sales tax.

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.