

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

TSB-A-90(15)S
Sales Tax
March 21, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S891227A

On December 27, 1989 a Petition for Advisory Opinion was received from Edward A. Donoghue Associates, Inc., Shushan Road, P.O. Box 201, Salem, New York 12865.

The issue raised by Petitioner, Edward A. Donoghue Associates, Inc., is whether its proposed publication, Elevator Code News, is a periodical for purposes of Article 28 of the Tax Law and thus exempt from sales tax pursuant to Section 1115(a)(5) of the Tax Law.

The proposed publication, Elevator Code News, will be a bimonthly newsletter that will report on codes, standards and regulations affecting the vertical transportation industry. Subscribers will be informed of revisions, calls for public comment, interpretations, proposals under consideration and the availability of new publications affecting the industry.

Subscriptions to Elevator Code News will be available for purchase by the general public and the issues will not, either singly or when successive issues are put together, constitute a book.

Petitioner has not yet determined whether all of the articles appearing in Elevator Code News will be written by Edward A. Donoghue, President of the Petitioner or whether selected articles will be written by persons other than Mr. Donoghue, with the majority of articles written by him.

Section 528.6(c) of the Sales and Use Tax Regulations defines a periodical as follows:

(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.

The proposed publication, Elevator Code News, would appear to meet all of the criteria set forth in Section 528.6(c) of the Sales and Use Tax Regulations so as to qualify as a periodical provided that the articles contained in the newsletter are written by a staff of writers who originally prepare said articles. As such, its sale would be exempt from sales tax pursuant to Section 1115(a)(5) of the Tax Law.

However if all of the articles appearing in Elevator Code News are authored by Mr. Donoghue, than the publication would fail to meet the requirement set forth in Section 528.6(c)(1)(v) of the Sales and Use Tax Regulations that the articles be by different authors and thus it would not qualify as a periodical. As such, its sale would not be exempt from sales tax pursuant to Section 1115(a)(5) of the Tax Law.

DATED: March 21, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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