

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

TSB-A-98(55)S
Sales Tax
August 6, 1998

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.S980218A

On February 18, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from The Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D.C. 20037.

The issues raised by Petitioner, The Bureau of National Affairs, Inc., are:

- (1) Whether twenty-three of its print publications, issued on a periodic basis, are periodicals or newspapers which qualify for exemption from New York State and local sales and compensating use taxes under Section 1115(a)(5) of the Tax Law.
- (2) Whether these publications qualify for exemption from sales and compensating use taxes if they are sold in CD-ROM format or delivered over the Internet.
- (3) Whether these publications qualify for exemption from sales and compensating use taxes if they are sold together in both print and CD-ROM or Internet format for one single price.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner is a publisher of print and electronic news and information, reporting on developments in health care, business, labor relations, law, economics, taxation, environmental protection, safety, and other public policy and regulatory issues. Its publications provide news notification services and practical guidance to the user. Petitioner's principal users are accountants, attorneys, profit and nonprofit corporations and governmental agencies.

Each publication is published either daily, weekly, biweekly or bimonthly. The publications include current news and issues affecting the respective field or industry. Unlike some of Petitioner's publications which are reference services and subject to New York State sales and use taxes, the publications which are at issue in this opinion are notification services. While the reference service is intended to provide primary source material of cumulative current law and cases, the notification service is intended to provide a snapshot (notification) of current issues affecting the field. Notification services

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provide the subscriber with current, up-to-date information from Petitioner's editorial viewpoint of the cases, regulations, or law reported on. With each update, previous releases provide diminishing utility to the user as news previously reported becomes obsolete and outdated.

Petitioner numbers each page of many of its subscriptions sequentially, on an annualized basis. That is, with each new year, the page numbers begin with one. This does not require the subscriber to retain each successive edition, join or bind them together, or treat them as a book, but it is a reaction to customer requests and competitive pressures. Various reasons exist for such a request. It allows those subscribers who wish to retain a number of issues to properly identify the period and whether all issues are available; it is a marketing tool used to show cost-conscious subscribers the quantity, in pages, of a particular service they receive; and it provides a quick and easy reference for users. The numbering structure has helped set Petitioner apart from its competitors who primarily use conventional numbering between issues.

While many of Petitioner's publications provide full text of court decisions, rulings, and legislation, this component comprises a small percentage of the full service. The balance of these services are comprised of news affecting the targeted customer community; judicial or legislative proceedings; court dockets; and judicial, legislative and executive summaries which incorporate Petitioner's editorial interpretation and analysis. Petitioner's editors provide their insight and analysis in evaluating issues affecting the targeted customer community and in their selection of what to include in each issue. The bulk of the publications reflect editorial selection, commentary, and classification of primary judicial, legislative and regulatory materials.

As part of its petition, Petitioner submitted sample copies and a synopsis of each of the twenty-three publications. In general, Petitioner states that all of the publications are published in printed form at stated intervals, more than four times a year. They do not, either singly or with successive issues, constitute a book. They are available to the general public. They have continuity as to title and general nature of content from issue to issue. They are generated by a staff of writers who originally prepare the articles. Where binders are provided, they are used to retain the current year's releases for future reading and distribution. Most customers retain the reporters until the end of a semi-annual period or until all interested readers have had an opportunity to review the material. Past releases are not retained by the customer but rather thrown away at the end of the semi-annual period. New binders are not given to the customers.

1. Daily Environment Report

Published daily, this newsletter allows the user to monitor fast-changing environmental laws, regulations, and policies, as well as activities of the environmental community that could affect their plans and interests; analyze the

impact of the latest environmental developments; plan, prioritize and direct lobbying activities; make day-to-day and long-term environmental plans; and anticipate company needs. It provides detailed news analyses regarding environmental actions of the past twenty-four hours including:

- legislative and regulatory proposals
- agency activities including investigations and enforcement actions
- court and administrative decisions
- litigation
- congressional hearings
- industry events

On a weekly basis the newsletter features state news, i.e., stories on recent state environmental regulatory and legislative developments, and international news, i.e., recent international environmental developments. In addition, this newsletter provides exclusive articles and interviews on issues affecting environmental actions.

2. Managed Care Reporter

Published weekly, this publication keeps the customer informed of developments affecting the managed care industry. It is broken down into the following sections:

- Highlights - capsule, front-page descriptions of the week's most significant developments, with page reference.
- Market Focus - article(s) written by staff editors focusing on issues affecting managed care organizations. This includes but is not limited to detailed analysis of what various managed care organizations are doing in various states, interviews with managed care experts and reports on industry conferences and seminars.
- In Government - up-to-date reporting of government actions, activities and legislation affecting such managed health care areas as Medicare, Medicaid, plan regulations, contracts and liability. The articles are pulled together in a news-reporting layout with editors and correspondents reporting on interviews, meetings and studies conducted by government agencies.
- In the Marketplace - up-to-date reporting of managed care organizations' actions, activities, studies, lobbying efforts, products and competition. The articles are pulled together in a news-reporting layout with editors and correspondents reporting on interviews, meetings and studies conducted by managed care organizations.
- In the Courts - analysis and editorial comment regarding significant court cases which have a direct effect on the managed care industry.
- Perspective & Analysis - commentary and perspective on a range of issues facing the managed care industry. In general, the articles provide content for understanding trends or practical guidance on particular matters. These articles are generated by Petitioner's editors or outside experts in the field of managed care.

3. International Environment Reporter - Current Reports

Published weekly, this publication provides the customer with timely, accurate and in-depth information on international environmental law and policy in the major industrialized and developing nations. Major topics covered are international treaties, greenhouse gas emission restrictions, marine affairs, transboundary pollution and pollution control programs. The publication is broken down into the following sections:

- Current Report - detailed analytical reports on a broad range of economic, political and technological issues affecting environmental programs worldwide, including proposed rules, legislation and reports; legal and regulatory actions; review and permit procedures; treaties; conventions; protocols; enforcement; and litigation.
- Analysis and Perspective/Special Reports - in-depth articles and investigative reports on major environmental issues, often written by outside experts.
- Journal - brief notice of official actions, meetings scheduled, publications available.
- Full Text - on occasion, proposals, declarations, draft policies and communiques.

4. Law Officer's Bulletin

Published biweekly, this publication provides the customer with timely, accurate and in-depth information on the latest court rulings and other legal trends and developments affecting law enforcement duties today. It is written for law officers, not lawyers, and is written without the legalese. Major topics covered are search and seizure, interrogation, warrants for arrest and search, electronic surveillance and wiretapping and entrapment. The publication is broken down into the following sections:

- Trends and Developments - plain-English summaries of relevant U.S. Supreme Court decisions and other significant federal and state court decisions involving law enforcement officers. This section includes descriptions of the legal reasoning behind selected rulings and explanations of their impact on day-to-day law enforcement. This section also includes notice of non-judicial developments such as Justice Department proposals and congressional actions.
- You Be the Judge - selected court cases involving issues and situations law officers are likely to face, written in a "you are there" style.
- Perspective - in-depth examinations of constitutional and legal problems police officers confront, landmark court cases, new techniques in policing and other topics of critical interest to law enforcers.

5. Medicare Report

Published weekly, this publication provides the customer with timely, accurate and in-depth coverage of legislative, regulatory and legal developments affecting the Medicare program. It allows the customer to stay abreast of changing rules, regulations and court decisions which affect Medicare; monitor new health care reform proposals and other legislative activities; and plan litigation strategies. The major topics covered by this publication are Health Care Financing Administration (HCFA) regulations, clinical laboratories, budgetary proposals, Medicare litigation, reimbursement policies, appeals process, fraud and abuse investigations and managed health care and physician payment. The publication is broken down into the following sections:

- Regulatory - current coverage of regulatory developments and full reports on the activities of the HCFA, the Department of Health and Human Services (HHS) Office of Inspector General and the Office of Health Technology Assessment.
- Legislation and Other Developments - in-depth reports on significant legislative activities; complete detail on meetings and recommendations of the Prospective Payment Assessment Commission and Physician Payment Review Commission; and notification of changes in programs or payment levels.
- Legal - summaries of Provider Reimbursement Review Board and Administrative Law Judge decisions, investigations and determinations of the HHS Inspector General, and of pertinent federal district and appeals court decisions.
- Health Care Reform - coverage of legislative proposals, health insurance revisions and alternative financing arrangements, including reports on universal access, cost-containment strategies, quality of care and tax proposals.
- Conferences - detailed reports on major meetings of various health care organizations.
- Analysis - periodic, in-depth articles on major Medicare issues.
- Full Text - text of selected final rules and proposed rules issued by HCFA.

6. Daily Report for Executives

Published daily, this newsletter provides detailed news analyses regarding government policy issues of the past twenty-four hours including:

- Today's Summaries - front-page summaries of the previous day's most significant developments, with page references.
- Congressional and Presidential Activity - weekly preview of upcoming congressional activity plus daily notice of floor action, reports filed, bills and resolutions introduced, committee action and meetings scheduled, and the President's schedule.

- Regulations, Economics and Law - up-to-the-minute, inside information on legislative and regulatory proposals, congressional and agency hearings, administrative activities, court decisions, statements by major policymakers and other government actions influencing national and international interests.
- Taxation, Budget and Accounting - next-day notification and analysis of significant tax developments affecting law and policy including statements by major policymakers and activities of professional tax and accounting groups.
- State Tax Developments - state legislative and administrative tax and budget actions.
- Tax Leads - weekly briefs on actions and trends of interest to tax professionals.
- Tax Decisions and Rulings - reports and full text of U.S. Tax Court opinions, significant tax rulings, summaries of IRS technical advice memorandums and private letter and exemption rulings, summaries and full text of rulings, procedures, announcements and notices in Internal Revenue Bulletins and periodic highlights of the Internal Revenue Manual.
- Full Text - of legislation and regulations, advance rulings, procedures, Federal Reserve chairman testimony, U.S. Supreme Court decisions, Treasury reports, conference and committee reports and executive orders and speeches.
- Special Reports and Analysis - periodic feature stories exploring major developments, trends and issues in depth.
- Annual Outlook - critical report forecasting government action in the coming year in the areas of economics, taxation, budget, employee benefits, trade, environment, energy, safety and regulatory actions.

7. Federal Contracts Report

Published weekly, this publication provides the customer with timely, accurate, and in-depth information on federal contracting laws, regulations, policies and litigation. Major topics covered are new and revised procurement policies, acquisition policy provisions contained in annual authorization and appropriation acts, audits and investigations of cost data, bid protests and disputes over contract awards, Cost Accounting Standards and small, disadvantaged business contracting and subcontracting issues. It is broken down into the following sections:

- News - timely, in-depth reports on major developments affecting federal government contracts and close coverage of activities of the Office of Federal Procurement Policy, the Defense Department, NASA, General Services Administration and Congress.
- News in Brief - highlights of other significant procurement issues and developments.

- Regulations in Brief - summaries of proposed, interim and final regulations.
- Legislation - status of pending legislation.
- Legal Developments - in-depth stories on bid protests, claims, indictments, settlements, appeals, suspensions and disbarments, and other legal matters involving federal contractors and subcontractors. Legal developments in various venues including agency boards of contract appeals, the General Accounting Office (GAO) and the courts.
- Decisions in Brief - summaries of additional decisions from federal courts, agency boards and GAO.
- Analysis - periodic feature reports by outside experts, analyzing the impact of major procurement issues and developments.
- Text - reprints of selected new regulations, court and administrative decisions, legislation, policy statements and internal agency memoranda.

8. Employment Discrimination

Published weekly, this publication keeps the customer informed of current issues affecting the heavily-litigated area of employment discrimination law. The major topics covered are discrimination, sexual harassment, family and medical leave, AIDS, benefit plans, class actions, discovery, alternative dispute resolution, and taxation. Major laws are covered including Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1991 and the Americans with Disabilities Act. Agencies such as the Equal Employment Opportunity Commission (EEOC), Office of Federal Contract Compliance Programs, the Department of Justice, Congress, the White House, GAO and state equal employment opportunity agencies are also covered. The publication is broken down into the following sections:

- Current Developments - detailed update on recent events and trends covering public and private workplaces, reports from the federal and state arenas on legislation, agency enforcement actions and policies, congressional actions, alternative dispute resolutions, professional conferences, etc.
- Court Decisions - significant opinions relating to employment discrimination from all courts nationwide including in-depth review, names of attorneys involved and perspectives on the ruling's impact.
- Litigation - covers pre-trial actions, pending lawsuits, appeals and interim court orders.
- Verdicts and Settlements
- Appellate Briefs - summaries of legal briefs filed by the EEOC and others.
- Analysis and Perspective - articles by practitioners and other experts on hot topics, practical advice on avoiding liability and litigation strategies and procedures.
- Interviews - views of leading policymakers and specialists.

- Text - selected reprints and excerpts of proposed and enacted laws and regulations, opinions, pleadings, consent decrees, agency guidelines or policies, and speeches.
- Calendar - comment deadlines, scheduled hearings and conferences and new publications.

9. Securities Regulation & Law Report

Published weekly, this publication keeps the customer informed of current securities law and futures regulation and up-to-date developments from federal and state judicial, legislative and regulatory arenas. Major topics covered are insider trading, investment advisor regulation, executive compensation, small business rules, arbitration, and issues concerning market regulation, jurisdiction, municipal securities, political contributions and global markets. The publication is broken down into the following sections:

- Federal Securities and Corporate Developments - in-depth analysis of significant federal securities developments covering federal civil and criminal proceedings, activities at the Securities and Exchange Commission (SEC), congressional hearings, debates and legislative proposals, financial planner regulation, arbitration and accountant and attorney liability issues.
- State Developments - reports of state court rulings and legislative and regulatory developments in the securities field.
- Futures Regulation - close coverage of activities at the Commodity Futures Trading Commission, analysis of judicial decisions in futures regulation, international future issues and decisions from reparation hearings.
- Accounting and Disclosure - information needed to prepare, review and audit financial statements filed with SEC and for annual meetings, SEC accounting and disclosure rule changes, enforcement and disciplinary actions against accountants, Financial Accounting Standards Board standards, pertinent legislation and statements of the American Institute of Certified Public Accountants.
- No Action and Interpretive Letters - summaries of the most significant SEC responses on registration of securities and securities professionals, filing obligations and shareholder proposals.
- Interviews - with key regulators and SEC officials offering insight into major securities developments, trends and issues.
- Conference Coverage - detailed reports from securities-related meetings of professional organizations.

10. Patent Trademark & Copyright Journal

Published weekly, this publication keeps the customer informed of significant developments in the area of intellectual property law. It gives the user accurate, unbiased coverage of significant actions and emerging trends and

expert legal analysis of complex issues. Major topics covered are biotechnology patents, gene patenting controversy, cable TV and digital audio recording technology, computer software protection, first-to-file patent system, international patent harmonization and tariff and trade agreements. This publication is broken down into the following sections:

- Highlights - capsule, front-page descriptions of the week's most significant developments, with page reference.
- News & Comment - in-depth coverage and analysis of significant federal and state developments affecting every area of intellectual property law such as judicial decisions, international developments, new legislation (including background, language and intent, committee hearings, floor actions, testimony, reports and enactment), rulemaking and other activities of the U.S. Patent and Trademark Office, the U.S. Copyright Office and other agencies.
- The Supreme Court - full text of opinions affecting intellectual property law. Reports on cert petitions files, actions on petitions, selected briefs and oral arguments.
- Briefs - summaries of noteworthy cases, statutes, publications and association developments.
- Text - full or partial text of legislation, floor remarks, committee reports, regulations, court decisions, policy statements and speeches.
- Conferences & Conventions - reviews of meetings of professional organizations.
- Analysis - review of pending bills and regulations and annual legislative review and outlook.

11. Banking Report

Published weekly, this publication keeps the customer informed of significant developments in the banking industry. Major topics covered are regulatory affairs, capital and disclosure requirements, consumer protection legislation, accounting for new financial instruments, savings and loan regulations, enforcement, international finance, and interstate banking and branching laws. This publication is broken down into the following sections:

- Highlights - capsule, front-page descriptions of the week's most significant developments, with page reference.
- News - timely coverage of the latest regulatory, legislative, and industry developments, as well as close coverage of such agencies as the Federal Reserve Board, the Office of the Comptroller of the Treasury, SEC, the Commodity Futures Trading Commission, the Treasury and Justice Departments, Congress and the state and federal courts.
- Bank Notes - quick-reading highlights of financial services developments, regional developments and personnel changes.

- Thrift News - notice of developments involving savings institutions, complete reports and analysis of savings and loan regulations, deposit insurance issues and thrift legislation.
- Legal Developments - broad timely coverage of current federal and state court cases involving the banking industry, detailed reports on enforcement actions and other legal developments nationwide.
- Economic Developments and International Finance - coverage of international debate on regulations of financial services.
- Journal - brief notices of congressional and regulatory actions affecting the financial services industry.
- Text - of court decisions and agency rulings, new regulations and legislation.
- Analysis and Perspective
- Special Reports - periodic full-length articles on issues critical to banking law practitioners, including interviews, analysis of current key issues or developments and annual legislative and regulatory outlook.

12. Bankruptcy Law Reporter

Published weekly, this publication keeps the customer informed of fast-breaking developments in bankruptcy law. Major topics covered are adequate protection, automatic stay, bad faith filings, bankruptcy jury trials, bankruptcy fraud and abuse, executory contracts, setoffs, trustees' duties and lender liabilities. This publication is broken down into the following sections:

- Highlights - capsule, front-page descriptions of the week's most significant developments, with page reference.
- News - timely coverage of significant legal, legislative and regulatory developments including judicial decisions, recent filings and motions, new and proposed bankruptcy legislation, revisions to bankruptcy rules and forms, related statutory developments, significant conferences and seminars and new and related legal publications.
- Legislative Update - periodic update on the status of bankruptcy-related bills introduced by Congress.
- Supreme Court Update - status of petitions and cases pending before the Supreme Court.
- Bankruptcy Taxation Update - quarterly review of tax-oriented cases having an impact on bankruptcy practice.
- Text - of court decisions and agency rulings, new regulations and legislation.
- Calendar - of important meetings, seminars and conferences.

13. Antitrust and Trade Regulation Report

Published weekly, this publication addresses significant competition and deceptive practice developments on the federal, state and international levels. Major topics covered are price fixing and bid rigging, mergers and acquisitions, joint ventures, restraints of trade, deceptive practices, price discrimination,

monopolization, tying arrangements, advertising, unfair competition, warranties, debt collection, credit reporting and class actions. This publication is broken down into the following sections:

- Highlights - capsule, front-page descriptions of the week's most significant developments, with page reference.
- In This Report - brief description of every story in the report, organized by topic.
- News & Comment - editorial analysis of comprehensive information on private and public enforcement suits, treble damage actions and injunctive suits as well as in-depth reports on the actions of the Department of Justice, Federal Trade Commission, Congress, the White House and industry and consumer groups.
- State Developments - enforcement of federal and state restrictive trade practice laws by state attorneys general, decisions under state competition and deceptive trade practice laws and other significant state developments such as complaints and consent decrees, proposed legislation, decisions in cases and parens patriae actions.
- Franchising - legislative, regulatory and decisional developments involving anticompetitive or deceptive practices in franchised distributions systems.
- International Developments - enforcement of competition laws outside the U.S., major U.S. enforcement developments affecting competition and international trade, actions, judgments and initiatives of the European Union Commission, Court of Justice and European Union, and international trading offices.
- Text - reprints of selected court and Federal Trade Commission decisions, proposed and final legislation, rules and regulations.
- Official Actions - overview of cases before the Supreme Court, cases handled by the Federal Trade Commission or the Justice Department and congressional developments.
- Calendar of Events - notice of important meetings, conventions and seminars.

14. Daily Tax Report

Published daily, this newsletter provides detailed news analyses regarding tax issues of the past twenty-four hours including:

- tax, budget and accounting issues
- legislative, Treasury and Internal Revenue Service activities
- state tax activities including recent legislation, proposals and budget issues
- court and administrative decisions
- legislative and presidential calendars
- congressional hearings
- executive summaries of tax rulings and decisions

The newsletter also provides exclusive articles and interviews on issues affecting tax activities.

15. The United States Law Week

Published weekly, this publication covers every area of the law including bankruptcy and reorganizations, employment law, environmental law, criminal law, constitutional law, business regulation, securities, RICO, products liability, family law and intellectual property rights. It reviews current legal issues, whether it be in the courts, legislature, or the executive branch and provides clear, concise and definitive explanations and analysis of the issues. Petitioner's staff writers attend and report on all conferences which have a direct relation to legal issues in the United States.

One component, which is relatively small in relation to the other sections of the publication, is a summary of orders for the preceding week. This summary lists U.S. Supreme Court cases either reviewed or denied review and their arguments.

16. Health Law Reporter

Published weekly, this newsletter provides rapid notification of current legal issues and developments affecting health care providers. It provides news of major federal and state court decisions across the wide spectrum of disciplines that have an impact on health law. Close coverage is provided of the broad range of government agencies that influence the health care market. In addition to news and developments, the newsletter provides the user with congressional and regulatory calendars, text and journal and analysis and perspective.

17. Health Care Policy Report

Published weekly, this publication monitors policy proposals, debates and responses in federal, state, private-sector and public arenas related to health care policy. At the state level the publication provides fifty-state coverage of health care matters. At the federal level it provides a synthesis of the health care debate of the current administration, legislative and regulatory activity in Congress and the agencies, and lobbying by representatives of business, labor, health care providers, insurance companies, consumers and special interest groups. The publication includes the following sections:

- federal developments
- state developments
- private-sector actions
- analysis and perspective
- special reports
- surveys and studies

18. Daily Labor Report

Published daily, this report provides news on the previous day's significant federal and state labor developments, including coverage of the Department of Labor, National Labor Relations Board, Equal Employment Opportunity Commission, Office of Federal Contract Compliance Programs, Occupational Safety and Health Administration, Congress, the Supreme Court, state legislatures and regulatory agencies, federal and state courts, unions and industry.

This publication discusses and analyzes various news issues affecting labor, including studies conducted by the U.S. Department of Labor. These analyses are conducted by informed experts in the field of labor law and labor statistics. Many of the articles are written from the first person perspective, i.e., "BNA was told . . ."

19. Fair Employment Practice

Published biweekly, this newsletter provides updates on significant Equal Employment Opportunity developments including:

- federal and state court decisions and Equal Employment Opportunity Commission rulings
- new laws, regulations and agency directives
- new or changing federal and state regulatory requirements
- affirmative action programs
- special programs for minorities, women, older workers and others

20. Human Resources Report

This subscription includes weekly reports and monthly newsletters. Material covered includes:

- news and developments concerning employee relations and how they affect the private sector including federal regulatory developments, Labor Department initiatives, activity on Capital Hill, contract negotiations, employee trends, work stoppages and lockouts and layoffs
- employee-management relations
- lists of publications, meetings and surveys
- arbitration rulings regarding grievances
- health and safety issues
- international developments
- statistical releases such as the Consumer Price Index, Gross Domestic Product and Employee Cost Index
- legal developments
- pay and benefits
- work and family
- workforce strategies monthly report

- actual company programs and policies
- review of cost-effective benefit plans to help the user respond to changing employee needs

21. Environmental Compliance Bulletin

Published biweekly, this bulletin provides rapid notification of federal and state environmental legislative and regulatory proposals and other critical environmental actions including:

- compliance deadlines and procedures
- compliance related documents
- changing laws and regulations
- pollution prevention methods
- inspections and enforcement
- training opportunities
- new technologies
- industry strategies
- tips from agency officials and hands-on guidance from industry experts
- practical, hands-on and step-by-step solutions to cut costs

22. Prevention of Corporate Liability

Published bimonthly, this report of news and developments includes:

- new judicial decisions
- pre-decisional aspects of civil, criminal and administrative cases
- enforcement trends
- proposed and final federal and state legislation

23. Americans with Disabilities Act Manual

Published bimonthly, this newsletter includes:

- court filings and decisions resulting from the Americans with Disabilities Act
- federal legislative and regulatory actions
- policy guidance from the Equal Employment Opportunity Commission
- summaries of state legislative changes

Applicable Law and Regulations

Section 1101(b)(6) of the Tax Law defines tangible personal property, in part, as follows:

. . . Corporeal personal property of any nature. . . . Such term shall also include newspapers and periodicals where the vendor ships or delivers the entire edition or issue of the newspaper or periodical, with or without the advertising included in the paper

edition or issue, but not including anything, other than advertising, not in such paper edition or issue, to the purchaser by means of telephony or telegraphy or other electronic media, but only where the amount of the sale price to such purchaser of such newspaper or magazine or the subscription price, in the case of a subscription to a newspaper or periodical, including any charge by such vendor for shipping or delivery to the purchaser, is separately stated to such purchaser.

Section 1105 of the Tax Law imposes tax upon the "receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1115 of the Tax Law provides, in part:

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(5) Newspapers and periodicals.

Section 528.6 of the Sales and Use Tax Regulations provides, in part:

(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.

(2) Notwithstanding the fact that a publication may be devoted primarily to matters of specialized interest, such as legal, mercantile, financial . . . nevertheless, if, in addition to the special interest it serves, the publication contains general news, it is entitled to the classification of newspaper.

* * *

(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.

Opinion

Petitioner engages in the print and electronic publication of various daily, weekly, biweekly and bimonthly publications targeted to audiences of high-level and technically sophisticated users in the fields of health care, business, labor relations, law, economics, taxation, environmental protection, safety and other public policy and regulatory issues. Petitioner's principal users are accountants, attorneys, profit and nonprofit corporations and governmental agencies.

With respect to issue "1," to the extent that Petitioner's publications are devoted primarily to matters of specialized interest and do not contain matters of general interest, they are not newspapers for the purpose of the exemption contained in Section 1115(a)(5) of the Tax Law since they do not meet the definition of a newspaper contained in Section 528.6(b) of the Sales and Use Tax Regulations. Petitioner's publications do, however, conform generally to all five of the regulatory requirements of a periodical for purposes of the exemption from the sales and compensating use taxes. See Section 528.6(c) of the Sales and Use Tax Regulations.

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Since all twenty-three publications are published in printed form at stated daily, weekly, biweekly or bimonthly intervals, they unquestionably meet the first requirement of being published in printed form at least four times a year.

Although most of the publications have prepunched holes to allow for insertion into a three-ring binder and in fact come with one or two binders, the thrust of the publications is periodicity, i.e., a continuing presentation of timely, current articles on varied topics. Therefore, they do not in any way constitute a book or books.

Members of the general public may subscribe to all of the publications, and the central core of each publication is continuity of content as they focus from week to week on issues affecting the respective field or industry.

Each publication contains a variety of articles written for a knowledgeable audience who look to the publications to provide them with news of fast-breaking events and other information of interest to persons within the industries served. Petitioner's staff of writers cover news events and conduct interviews to originally prepare articles, most of which are signed. Petitioner also includes in these publications reports which cover comments, opinions, advice and/or articles of individuals known in the areas of specialization reported by Petitioner. Although some of the publications additionally contain compilations of data, a substantial portion of each publication is devoted to articles. Accordingly, Petitioner's printed publications qualify as periodicals under Section 1115(a)(5) of the Tax Law and Section 528.6(c) of the Sales and Use Tax Regulations and receipts from the sales of these twenty-three publications are not subject to State and local sales and use taxes.

Concerning issue "2," Section 1101(b)(6) of the Tax Law in the definition of tangible personal property extends the exemption from sales and compensating use taxes afforded printed newspapers and periodicals by Section 1115(a)(5) of the Tax Law to the electronic distribution of complete (except for advertisements) editions of newspapers and periodicals. Accordingly, provided that Petitioner produces tangible paper editions of its publications for sale, the electronic versions of such publications will constitute tangible personal property and will also meet the criteria of periodicals pursuant to Section 528.6(c) of the Sales and Use Tax Regulations. Therefore, on this basis, receipts from the sale of Petitioner's publications when sold in CD-ROM or Internet format are not subject to sales and use taxes.

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Regarding issue "3," provided that any sales slip, invoice, receipt or other statement of the price given by Petitioner to its customers shows the single price to be for the printed publication and its electronic counterpart only, and does not include any other property or services for sale, such single charge will be exempt from tax.

DATED: August 6, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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