

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-00(15)S
Sales Tax
March 29, 2000

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S991129A

On November 29, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from Hunt Real Estate Corporation, 5570 Main Street, Williamsville, NY 14221. Petitioner, Hunt Real Estate Corporation, furnished additional information with respect to the Petition on December 6, 1999.

The issue raised by Petitioner is whether “Showcase of Homes”, a publication printed by Petitioner, is a periodical exempt from State and local sales and compensating use taxes under Section 1115(a)(5) of Tax Law.

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

Petitioner publishes the “Showcase of Homes” 11 times per year (monthly from January to November) for distribution to the general public. The publication includes informative articles relating to the residential real estate market as well as a comprehensive listing of real estate available for sale. Each issue of the publication contains a variety of articles by four different authors.

Petitioner furnished a copy of the August, 1999 issue of the publication as part of its Petition for Advisory Opinion. This issue contained 104 pages. Four articles, each one page or less in length, by four different authors appeared in four pages of the publication. The articles are written on topics concerning qualifying for a mortgage, picking a realtor, relocating with pets and advice for first time home buyers, and were written by employees of Hunt Realty or one of its subsidiaries. At the bottom of each article is displayed the name of Petitioner or its subsidiary, or its Web site. The remaining 100 pages are devoted to advertising and listings of real estate which is available for sale in western New York.

Applicable Law and Regulations

Section 1105(a) 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.

* * *

(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

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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 information services;

(iii) publications which are issued at stated intervals but which are books or parts of a book.

Opinion

In the instant case, based on the sample edition submitted by Petitioner, the Showcase of Homes published 11 times per year by Petitioner is made up almost exclusively of advertising and real estate listings. Publications devoted to advertising and selling of products are not periodicals. See Section 528.6(c)(3) of the Sales and Use Tax Regulations; Sharper Image Corporation, Dec Tx App Trib, November 24, 1999, TSB-D-99(13)S; Brooklyn Metropolitan Real Estate News, Adv Op St Tx Comm, October 28, 1985, TSB-A-85(57)S. Accordingly, since the Showcase of Homes is devoted almost solely to advertising and real estate listings, such publication does not qualify as an exempt periodical under Section 1115(a)(5) of the Tax Law and Section 528.6(c) of the Sales and Use Tax Regulations.

DATED: March 29, 2000

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

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