

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

TSB-A-07(6)S
Sales Tax
March 16, 2007

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S050720A

On July 20, 2005, the Department of Taxation and Finance received a Petition for Advisory Opinion from PricewaterhouseCoopers LLP, 300 Madison Avenue, New York, New York 10017. Petitioner, PricewaterhouseCoopers LLP, provided additional information pertaining to the Petition on April 7, 2006.

The issue raised by Petitioner is whether Petitioner's client's publication (hereinafter "Publication C") qualifies as a periodical that is exempt from sales tax pursuant to section 1115(a)(5) of the Tax Law.

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

Petitioner's client (hereinafter "The Company") publishes media dealing with international political and financial issues. The Company publishes Publication C which is designed to provide subscribers with news, analyses, political forecasts, and recommendations on a variety of topics within the broad subject area of financial investment. Based on the potential impact of news items, a risk level is assigned and indexed. The index is presented on a chart or table within Publication C. The publication also includes other charts, tables, and graphs that are complementary to the analytical articles, political forecasts, or recommendations. Publication C is available in hardcopy and electronic formats. It is only available through subscription. Petitioner further asserts that:

- Publication C is published four times a year in hardcopy form and is published 12 times a year electronically (four quarterly versions plus monthly updates);
- Publication C does not either singly or when successive issues are put together constitute a book or reference manual at year end;
- The Company accepts subscriptions for Publication C from anyone who pays the subscription fee;
- each issue of Publication C bears a relationship to prior or subsequent issues with respect to continuity of literary character, subject matter, style, and format; and
- articles or materials contained in Publication C are written or prepared by The Company's staff of writers. There are no author by-lines.

There is no difference between the quarterly electronic and hardcopy versions. However, subscribers to the electronic version receive electronic monthly updates as part of the subscription at no additional charge.

Petitioner submitted sample copies of the print version of Publication C as part of its Petition.

Applicable law and regulations

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

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 provides, in part:

Imposition of sales tax. . . . there is hereby imposed and there shall be paid a tax . . . upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

(c) The receipts from every sale, except for resale, of the following services:

(1) The furnishing of information by printed, mimeographed or multigraphed 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 1115(a) of the Tax Law provides, in part:

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 (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.

* * *

(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

The Company engages in the publication of hardcopy and electronic versions of Publication C. Petitioner asserts that (1) Publication C is published four times a year in hardcopy and electronic form with monthly updates to the electronic version; (2) Publication C does not either singly or when successive issues are put together constitute a book or reference manual at year end; (3) The Company accepts a subscription from anyone who pays the subscription fee; (4) each issue of Publication C bears a relationship to prior or subsequent issues with respect to continuity of literary character, subject matter, style, and format; and (5) articles or materials contained in Publication C are written or prepared by The Company's staff of writers.

The sample copies of Publication C submitted by Petitioner indicate that Publication C is not available on newsstands.

Examination of the sample copies of Publication C indicates that they do not either singly or when successive issues are put together constitute a book or reference manual. Publication C, therefore, appears to meet the requirements for being a periodical pursuant to section 528.6(c)(1)(ii) of the Regulations.

It also appears from the examination of Publication C that it has continuity of literary character, subject matter, style, and format; and thus the publication meets the periodical requirements of section 528.6(c)(1)(iv) of the Regulations.

Petitioner states that The Company accepts a subscription from anyone who pays the subscription fee. It appears that even though Publication C is not sold on newsstands, it is available to the general public by subscription for the purposes of section 526.8(c)(1)(iii) of the regulations. See *American Theater Press, Inc.*, Adv Op St Tx Comm, August 7, 1981, TSB-A-81(7)S for a discussion of the requirement that a publication must be available to the public.

Based on the representations of Petitioner and an examination of the sample copies provided by Petitioner, it appears that Publication C meets the requirements of an exempt periodical set forth in section 528.6(c)(1) of the Regulations. The hardcopy version of Publication C, therefore, qualifies as an exempt periodical under section 1115(a)(5) of the Tax Law.

For the electronic version of Publication C to be exempt from sales and use tax, there must be a tangible paper (hardcopy) edition or issue of the publication which is shipped, delivered, or sold by conventional means. The entire electronic edition (with or without the advertising contained in the hardcopy version) must be transmitted to The Company's customers by electronic media. In addition, the electronic version cannot include anything (other than such advertising) which is not in the hardcopy version. See section 1101(b)(6) of the Tax Law, and *The Bureau of National Affairs, Inc.*, Adv Op Comm T&F, August 6, 1998, TSB-A-98(55)S.

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Petitioner states that subscribers to the electronic version of Publication C receive monthly updates at no additional charge. An electronic version of Publication C that provides monthly updates to the quarterly hardcopy version does not have the same content as the hardcopy version. Therefore, sales of such an electronic version are subject to sales tax under section 1105(c)(1) of the Tax Law. See *CCH Incorporated*, Adv Op Comm T&F, April 1, 2003, TSB-A-03(13)S; *The Bureau of National Affairs, Inc., supra*.

DATED: March 16, 2007

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