

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

TSB-A-89 (16)S
Sales Tax
June 28, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S881219B

On December 19, 1988 a Petition for Advisory Opinion was received from Brownstone Publishers, Inc. 304 Park Ave. South, New York, N.Y. 10010.

The issue raised is whether petitioner's publication "New York CO-OP & Condo Insider" 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.

According to the Petitioner, New York CO-OP & Condo Insider is a monthly subscription newsletter that costs \$395 for twelve monthly issues. It currently has more than 600 paying subscribers. It is published twelve times annually and is normally mailed to subscribers during the first ten days of any given month. It is available for circulation to the general public. Company policy is to furnish a subscription to anyone who requests such a subscription and is willing to pay. It's readers include real estate brokers, developers, cooperative conversion plan sponsors, and attorneys.

Each issue contains a variety of articles, all of them conceived of, researched, written, edited, copyedited, and typeset by employees of Brownstone Publishers, Inc. The purpose of the newsletter is to present timely and useful information about the conversion of New York apartment houses to cooperatives and condominiums, developments in the law of condominiums and cooperatives, and insights on the New York cooperative and condominium market. Every single issue of New York CO-OP & Condo Insider addresses these questions.

The first issue appeared in April, 1983. Since then, it has grown to its current typical length of 26-48 pages. The current editorial mix is comprised of in-depth articles prepared by its staff, briefs and comments on court cases and rulings, and analysis and reportage on the current state of the cooperative and condominium sales market. Articles in the newsletter are not signed, but there is a staff box in every issue showing the names of those who prepare the articles for the newsletter and who have responsibility for it.

To guide readers to the many different types of articles that appear in their monthly issues, Brownstone prepares a quarterly, semi-annual, and annual index to New York CO-OP & Condo Insider. Only by using this index can one easily find all articles that have appeared on a single subject. The issues do not, either singly or when successive issues are put together constitute a book.

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 "New York C0-OP & Condo Insider" meets all of the criteria set forth in section 528.6(c) so as to qualify as a periodical. As such its sale is exempt from sales tax pursuant to section 1115(a)(5) of the Tax Law.

DATED: June 28, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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