

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

TSB-A-93 (48)S
Sales Tax
September 1, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930506A

On May 6, 1993 a Petition for Advisory Opinion was received from Waste Resources Associates, Inc., 2576 Seneca Avenue, Niagara Falls, New York 14305.

The issue raised by Petitioner, Waste Resources Associates, Inc., is whether Petitioner's publication, RCRA Update, qualifies as a periodical under the provisions of Section 1115(a)(5) of the Tax Law and Section 528.6(c) of the Sales and Use Tax Regulations.

The RCRA Update consists of a summary and interpretation, by Petitioner's staff, of each Environmental Protection Agency (hereinafter "EPA") change or notice regarding the hazardous waste management program as regulated by the Resource Conservation and Recovery Act and as published in the Federal Register. Along with these summaries, Petitioner includes a photocopy of the pertinent Federal Register pages to allow subscribers an opportunity to review the actual EPA language. A bimonthly mailing can include from one to ten separate notices on a variety of issues within the hazardous waste management area.

The RCRA Update is sold on a nationwide basis to anyone interested in such an updating service.

The RCRA Update includes summaries of interpretations of all EPA notices, proposals and final rules regarding changes to the hazardous waste regulations as found in 40 CFR 269 to 280. While individual topics may be diverse (i.e. technical design standards for a hazardous waste landfill or financial assurance for closure of a permitted facility or identification of a hazardous waste) all are involved in the EPA hazardous waste program.

Because the management of hazardous wastes involves many complex but interdependent disciplines, the EPA RCRA regulations require a multitude of special skills for interpretation and implementation. To adequately explain changes to this system, Waste Resource Associates, Inc. employs a staff of individuals with specialized expertise to read the notices, proposals or changes in the final rules and produce the summary explanations for their subscribers. Often, because of the complexity of the regulations, several individuals must collaborate to ensure production of an accurate document. All the summaries and interpretations are devoted to providing an understanding of the RCRA program.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax.--...there is hereby imposed and there shall be paid a tax of four percent 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, but excluding the furnishing of information which is personal and individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons, ...

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

Section 1115(a)(5) of the Tax Law provides an exemption from sales and use tax for newspapers and periodicals.

Newspapers and periodicals (Tax Law, §1115([a][5])). (a) Exemption. The sale of ... 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

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:

(ii) listings and compilations which constitute information services;

Example 6: A publisher compiles information concerning corporate securities and publishes the results in a series of publications issued biweekly. The publications are intended to comprise a complete reference book or manual at the end of the year. The publications are not periodicals but constitute a taxable information service.

Example 7: A company publishes and distributes weekly and daily reports on corporations, corporate securities, and bonds. The publications are not periodicals and constitute a taxable information service.

Section 528.6(c)(3)(ii) of the Sales and Use Tax Regulations provides that:

(3) Nothing in this section shall be construed to exempt as a periodical the following: ...

(ii) listings and compilations which constitute information services; ...

In the instant matter Petitioner's newsletter consists of photocopies of pages from the Federal Register which pertain to EPA changes or notices regarding the hazardous waste management program as regulated by the Resource Conservation and Recovery Act and comments, by Petitioner's staff, which are more in the form of a summary of the EPA changes or notices and only occasionally contain an editorial comment or note.

Accordingly, as Petitioner's newsletter consists mainly of photocopied pages from the Federal Register and staff written summaries of the information contained in the photocopied material rather than internally-generated editorial, forecasting, advisory or interpretational narratives (See West Publishing Co., Dec State Tax Comm, February 11, 1985, TSB-H-85(38)S) the newsletter does not meet the definition of a periodical as provided under Section 528.6(c)(1) of the Sales and Use Tax Regulations in that the newsletter does not 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. It is considered to be a compilation which constitutes a taxable information service (See

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Section 528.6(c)(3)(ii) of the Sales and Use Tax Regulations and Generic Stock Investment Service, Inc. Advisory Op, Comm of T & F, September 13, 1988, TSB-A-88(44)S.

Accordingly, Petitioner's newsletter is not a newspaper or periodical exempt from sales and use tax under Section 1115(a)(5) of the Tax Law. It is an information service which is not personal or individual in nature and is thus subject to sales and use tax under the provisions of Section 1105(c)(1) of the Tax Law.

DATED: September 1, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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