

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

TSB-A-95 (21)S  
Sales Tax  
June 21, 1995

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950125B

On January 25, 1995, a Petition for Advisory Opinion was received from Freetime Magazine Inc., 850 University Ave., Rochester, New York 14607.

The issues raised by Petitioner, Freetime Magazine Inc., are: (1) whether its publication qualifies as a periodical for sales tax purposes, and (2) whether charges for typesetting and layout on Petitioner's pre-press camera ready mechanicals constitute charges for tangible personal property.

Freetime Magazine is a bi-weekly publication which is published every other Wednesday.

Freetime Magazine never constitutes a book in either single or successive issues.

Every issue of Freetime Magazine is distributed to the general public at more than 500 places of public accommodation and retail outlets in the western New York area. It is also available by subscription.

Every issue of Freetime Magazine contains news and information gathered from press releases, public notices, and its own sources, of general interest with particular emphasis on area arts and entertainment. Current events in the arts and entertainment realm are reported in great detail and columnists regularly review, preview, and comment on events, music, film, theater, sports, dance, dining, the arts, etc.

Freetime Magazine uses an original copyrighted format, and every issue contains information and articles about Western New York's Arts and Entertainment Scene.

Freetime Magazine is written and edited by members of its staff as well as several regular columnists and various free lance contributors.

Petitioner subcontracts its typesetting and page layout to Blue Heron Graphics, a private business located in the same premises as Freetime Magazine.

All work performed by Blue Heron for Petitioner is performed to the exact specifications, and under the direct supervision of Petitioner.

All art work, photographs, mechanicals, text, and layouts used in the production of Freetime Magazine are the property of Petitioner at all times.

Charges for services performed by Blue Heron Graphics on behalf of Petitioner are for labor, skill, and graphic design. These charges are measured on a per page basis. Actual materials used in the production of the "camera-ready" pre-press mechanicals provided by Blue Heron to Petitioner are insignificant in cost.

These mechanicals provided to Petitioner by Blue Heron Graphics are made to the specifications of Petitioner's printer and are a necessary pre-production stage in the printing process. They are produced for the sole purpose of making "printing plates" and have no value except to the printer for their intended purpose as "intermediate" camera ready pages to be photographed by the printer as an essential step in the printing process.

The final printed product, Freetime Magazine, is then sold by the printer to Petitioner for distribution.

Freetime Magazine is not sold at retail but is given away.

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

Section 528.6(c) of the Sales and Use Tax Regulations sets forth the conditions that must be met by a periodical in order to qualify for exemption from sales tax as follows:

- (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.

With respect to issue "1", Petitioner's publication, Freetime Magazine, meets all of the criteria of section 528.6(c)(1) of the Sales Tax Regulations and thus qualifies as an exempt periodical for sales tax purposes in accordance with Section 1115(a)(5) of the Tax Law.

Section 1105(a) imposes a tax upon "[t]he receipts from every retail sale of tangible personal

TSB-A-95 (21)S  
Sales Tax  
June 21, 1995

property, except as otherwise provided in this article."

Section 1101(b)(6) defines tangible personal property as "Corporeal personal property of any nature. . . ."

Section 1115(a)(12) exempts "Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale . . . ." (Emphasis supplied)

With respect to issue "2", mechanicals and art work purchased by Petitioner are tangible personal property in accordance with Section 1101(b)(6) of the Tax Law. Art work and mechanicals used to produce newspapers and periodicals for sale qualify under section 1115(a)(12) of the Tax Law as exempt production equipment. However, since petitioner's periodicals are given away rather than sold, its purchases of typesetting and mechanicals are subject to sales tax.

DATED: June 21, 1995

s/PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

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