

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

TSB-A-03(13)S
Sales Tax
April 1, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S990329A

On March 29, 1999, the Department of Taxation and Finance received a Petition for Advisory Opinion from CCH Incorporated, c/o Wolters Kluwer U.S. Corporation, 161 N. Clark St., 48th Floor, Chicago, IL 60601-3221.

The issue raised by Petitioner, CCH Incorporated, is whether the subscription sales of 111 of its electronic publications qualify for exemption from sales and compensating use taxes by virtue of Section 1101(b)(6) of the Tax Law which extends the definition of tangible personal property to include the electronic distribution of complete editions of newspapers and periodicals.

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

Petitioner is an international publisher of business, tax, health and government publications which are distributed through print and electronic media. As part of its Petition, Petitioner submitted a list of 111 of its publications and various product catalogues/brochures which describe these selections. Petitioner states that all of these publications meet all five of the regulatory requirements of a periodical and as such are exempt from the imposition of sales and compensating use taxes under Section 1115(a)(5) of the Tax Law. Petitioner's electronic media products mirror its print products.

The publications are devoted to matters in the fields of tax, business, health care, labor relations, banking and governmental policy and regulation. The list identifies the format availability of each publication as Print, On-Line, CD-ROM, Internet, Lotus Notes and/or Disk. The format availability of 28 of these publications is identified as exclusively electronic on the list and/or in the product catalogues and brochures submitted with the Petition. All of the publications are printed or electronically updated at least four times a year, and most are updated weekly or bi-weekly. Members of the general public may subscribe to the publications, and the central core of each publication is continuity of content from one issue or update to the next. The print versions of these publications generally are bound in three-ring binders, which allow for pre-punched advanced sheets to be easily inserted and obsolete materials to be deleted from the binders.

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. (Emphasis added)

* * *

(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 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; (Emphasis added)

(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

Petitioner is in the business of publishing a wide variety of legal reference works targeted to audiences of high-level and technically sophisticated users in the fields of tax, business, health care, labor relations, banking and governmental policy and regulation. Petitioner engages in the print and electronic publication of its products. Petitioner submitted a list of 111 of its publications and states that all of these products qualify as exempt periodicals under the provisions of Section 1115(a)(5) of the Tax Law and are not subject to sales or compensating use tax. It is noted that these provisions do not exempt as a periodical "listings and compilations which constitute information

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services.” See Section 528.6(c)(3)(ii) of the Sales and Use Tax Regulations. These provisions also do not exempt “publications which are issued at stated intervals but which are books or parts of a book.” See Section 528.6(c)(3)(iii) of the Sales and Use Tax Regulations. This Advisory Opinion does not specifically determine which, if any, of Petitioner’s publications qualify for sales tax exemption under Section 1115(a)(5) of the Tax Law. For purposes of this Opinion, it is assumed that, except as noted below, all of these publications are periodicals as defined in Section 528.6(c) of the Sales and Use Tax Regulations.

Charges for the electronic versions of Petitioner’s publications may or may not be subject to sales or use tax depending on whether they meet certain criteria. See Section 1101(b)(6) of the Tax Law. For the electronic version of the publication to be exempt, there must be a tangible paper edition or issue of the publication which is shipped or delivered or sold by conventional means. The entire edition (with or without the advertising in the print version) must be transmitted to Petitioner’s customers by electronic media. In addition, the electronic version cannot include anything (other than advertising) which is not in the print version. Finally, the amount of the subscription price, including Petitioner’s charge for delivery, must be separately stated to the customer (see The Bureau of National Affairs, Inc., Adv Op Comm T&F, August 6, 1998, TSB-A-98(55)S).

In order to be considered a periodical for sales tax purposes, a publication must meet the requirements enumerated in Section 528.6(c) of the Sales and Use Tax Regulations. Petitioner submits that the 111 of its electronic publications in question meet all five of the regulatory requirements of a periodical and as such are exempt from the imposition of sales or compensating use tax. However, the format availability of 28 of these publications is identified as exclusively electronic on the list and/or in the product catalogues and brochures submitted with the Petition. A periodical must be published at certain stated intervals in printed or written form. See Section 528.6(c)(1)(i) of the Sales and Use Tax Regulations. Therefore, in the absence of an existing, available paper version, an electronic publication does not qualify as an exempt periodical (see Market News Service, Inc., Adv Op Comm T&F, August 20, 1991, TSB-A-91(60)S; Mark S. Klein, Adv Op Comm T&F, July 29, 1991, TSB-A-91(53)S; The Bureau of National Affairs, Inc., *supra*). Accordingly, to the extent that Petitioner’s publications are made available to its customers solely on an electronic basis, i.e., on-line, CD-ROM, diskette, Internet and/or Lotus Notes, they are not periodicals for purposes of the exemption contained in Section 1115(a) of the Tax Law and will be subject to tax under Section 1105(c)(1) of the Tax Law, unless otherwise exempt.

On the other hand, the electronic versions of the remaining 83 print publications in question are exempt as periodicals if their counterpart print versions qualify as periodicals and if they constitute tangible personal property under Section 1101(b)(6) of the Tax Law as discussed above. On this basis, the electronic publications, when sold on-line, or in a CD-ROM, diskette, Internet or Lotus Notes format, would not be subject to sales and compensating use taxes (The Bureau of National Affairs, Inc., *supra*). As discussed above, however, the electronic publications must be identical to the print version, with the exception of advertising, in order to be exempt from tax.

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Sales by Petitioner of electronic publications which do not have the same contents as the print version, or sales by Petitioner via electronic media of listings or compilations which constitute information services, are subject to sales tax under Section 1105(c)(1) of the Tax Law.

DATED: April 1, 2003

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Technical Services Division

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