

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-10(35)S
Sales Tax
August 10, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100302B

On March 2, 2010, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether receipts from the sale of graphic novel comic books, trade paperbacks that contain multiple issues of comic books, and single back issues of comics are subject to sales tax.

We conclude that back issues of comics published at stated intervals at least four times a year are exempt from sales tax as periodicals if sold at a price not greater than the original retail sales price. Graphic novels and trade paperbacks do not qualify as periodicals; therefore, the receipts from their sale are subject to sales tax as the sale of tangible personal property.

Facts

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

Petitioner sells comic books, graphic novels, and trade paperbacks. Most of Petitioner's comic book sales are of new issues. Back comic book issues account for a small percentage of Petitioner's sales receipts. Petitioner sells some back issues of comic books at below the initial retail offering price; others are sold at a price above the initial retail offering price.

Petitioner sells graphic novels that are in the form of comic books; these publications can be from 40 to 1000 pages in length. Each novel is an original work. Sample titles are "Maus," "Watchmen," and "Asdterios."

A trade paperback is usually a collection of specific comic books from a series: 4 to 12 issues are contained in a volume.

Analysis

Section 1115(a)(5) of the Tax Law exempts newspapers and periodicals from sales tax. The term "periodical" is defined in section 528.6 of the sales and use tax regulations. This regulation provides in part:

(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.

A comic book that is published serially under the same title at least once quarterly is exempt as a periodical. 20 NYCRR §528.6(c)(3), Example 1.

The regulations also provide that:

A publication which was originally a periodical but which is sold at a price which does not reflect its normal retail selling price shall be deemed to be sold as tangible personal property for collection or investment purposes and not as a periodical. 20 NYCRR §528.6(c)(4)

The sale of a new issue of a comic book published at stated intervals at least four times a year is exempt from sales tax because the new issues qualify as periodicals. The retail sale of an old issue of a comic book that would qualify as a periodical if sold new still qualifies for the periodical exemption if the old issue is sold at or below its initial retail price. Petitioner's sales of back issues of comic books that would qualify as a periodical if sold new are subject to sales tax only if the back issue is sold at a price greater than the initial retail price.

The retail sale of a graphic novel that is in the form of a comic book is subject to sales tax. The novels are not published at stated intervals; they are books. As such, these publications do not satisfy the criteria to qualify as exempt periodicals.

A trade paperback that is a collection of a specific comic book series is subject to sales tax. These paperbacks are not published at stated intervals; they are books. As such, these publications do not satisfy the criteria to qualify as exempt periodicals.

DATED: August 10, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.