

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

TSB-A-13(33)S
Sales Tax
September 10, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S130204A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its financial publication qualifies for the exemption from sales and use tax for electronic periodicals in Tax Law § 1115(gg)(2).

We conclude that the electronic periodical exemption applies to Petitioner's publication.

Facts

Petitioner sells a publication focusing on global investing across asset classes.

All issues of the publication have the same basic format. Each issue typically consists of 60 to 90 pages. Almost all of the pages of each issue are devoted to articles prepared by Petitioner's owner or independent contractors. Every issue features a main article incorporating an exclusive interview of a highly successful investment strategist or other person of significant interest to the investing community. Each issue typically will also have articles about some topical combination of macro-economic policy, fixed-income trends, developments in equities, events in hard and soft commodities markets, real estate, private equity, etc. The publication does not typically include comprehensive tables of financial data or other statistical information, as its purpose is to present financial investment ideas, rather than financial data. The publication is not designed in such a way that successive issues could be put together to form a compendium, compilation, or database.

The publication is not available to subscribers in hardcopy. Rather, subscribers access the publication via Petitioner's password-protected website, where the newest issue is available as a PDF printout, along with past editions. That webpage features the following header: "A Journal of Independent Research, Analysis, Opinion and Insight." The publication is issued on a regular schedule, about 20 times a year, and is not updated between issues. The website includes short summaries of articles that appeared in past issues, along with links to the articles. The website allows subscribers to perform searches limited to the articles published in past issues of the publication.

Analysis

The Tax Law imposes sales tax on the sale, except for resale, of information services, including those delivered electronically (Tax Law §§ 1105[c][1], [9]; 20 NYCRR § 527.3[a][1]; *Murphy Heating Service, Inc. v Chu*, 124 AD2d 907 [3d Dept 1986]). Prior to the enactment of

Chapter 583 of the Laws of 2011, applicable to sales made or uses occurring on or after March 1, 2012, newsletters delivered exclusively electronically did not qualify for the newspaper or periodical exemption in § 1115(a)(1) (*see* Tax Law § 1101[b][6]; 20 NYCRR § 528.6; TSB-A-91[60]S) and potentially were subject to tax as an information service. Chapter 583 amended the Tax Law by adding § 1115(gg), which provides an exemption for “electronic news services” and “electronic periodicals.”

Petitioner asks whether its publication, which is available only in electronic form, qualifies as an “electronic periodical” for purposes of § 1115(gg). The term “electronic periodical” is defined in Tax Law § 1101(a)(38), in pertinent part, as a publication that is accessed electronically, and which meets the following requirements:

- (A) The publication's predominant purpose is the presentation of news content, which it prominently features.
- (B) The publication is published at stated intervals, at least as frequently as four times a year but no more frequently than weekly, and is not updated between issues.
- (C) The publication's news content is purchased from contracted wire services or written or produced by multiple employees or engaged independent contractors of the person providing the publication, including, but not limited to, employees or engaged independent contractors of any affiliate of such person.
- (D) The publication is available to the public.
- (E) The publication holds itself out as a “magazine,” “periodical” or words of similar import and does not hold itself out as something other than a “magazine,” “periodical,” or words of similar import.
- (F) The publication has continuity as to its title and the general nature of its content over time.
- (G) The publication is not, in whole or in substantial part, a listing, catalog, database, or compilation.
- (H) The only search function the publication offers without a separately-stated, reasonable charge is a search of the publication's or of an affiliate's present or past news content.

For the purposes of the electronic periodical exemption, “news content” is defined as “articles, photographs, and video and audio material devoted to literature, the sciences, the arts, news, an industry, profession, sport or other field of endeavor, and does not include listings, advertisements, catalogs, compilations, databases, or the like.” (Tax Law § 1101[a][38][ii]).

The predominant purpose of Petitioner's publication is the delivery of news content, which it prominently features using a format that is consistent over time. It is published at stated intervals and with the sufficient degree of frequency, and is not updated between issues. Its news content is written or produced by multiple employees of Petitioner or independent contractors engaged by Petitioner. It holds itself out as a journal and is available to the public. The publication is not, in whole or in substantial part, a listing, catalog, database, or compilation. It has a search function, but the search function is limited to retrieving the publication's past news content. Accordingly, Petitioner's publication qualifies for the "electronic periodical" exemption, and Petitioner is not required to collect sales tax from its subscribers.

DATED: September 10, 2013

/S/

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.