

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

TSB-A-81 (30) S
Sales Tax
October 5, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810401B

On April 1, 1981 a Petition for Advisory Opinion was received from Carrier Corporation, Carrier Tower, P.O. Box 4800, Syracuse, New York 13221.

The issues raised are whether or not art services, printing services and distribution services purchased by Petitioner for the purpose of preparing and distributing a publication are subject to tax under the following conditions: (1) if Petitioner instructs the printer to send the printed matter directly to a mailing service for distribution to the ultimate reader or; (2) if Petitioner takes possession of the printed matter in New York State and makes the final distribution to the ultimate reader.

Petitioner is considering preparing and circulating a publication entitled "Carrier World" which would be directed to people associated with the air conditioning industry. Every issue would have articles dealing with research and technical advances made within the industry, sales and promotional techniques, and biographical sketches of air conditioning dealers and distributors "success stories". Circulation would be to distributors and dealers worldwide, about ten percent of which would be in New York State.

Petitioner would supply completed copy and illustrative material to an advertising agency who would set the type, complete the mechanical artwork and turn these items over to a printer. Petitioner would furnish the printer with illustrations, additional photographs and retouching services. The printer would purchase color separations and paper, print the publication and bill Petitioner for the entire amount.

Section 1105(a) of the Tax Law imposes a tax on: "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1115(a)(12) of the Tax Law exempts from the tax imposed by Section 1105(a) "Machinery and equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing, processing . . .". An exemption from the tax imposed pursuant to section 1105(a) is also provided for newspapers and periodicals. Tax Law §1115(a) (5).

Technical Services Bureau Memorandum TSB-M-79(7.1)S, dated May 15, 1980, provides that artwork, illustrations, layouts, drawings, paintings, mechanicals, overlays, designs, photographs, and paste-ups will qualify as machinery and equipment and may be purchased tax exempt if used directly and predominantly (more than 50%) in the printing of tangible personal property for sale.

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The Collection and Reporting Instructions For Printers and Mailers (Form ST-152) states the following: "A printer delivering printed or other duplicated advertising matter to a mailer in New York is required to collect the sales tax on his entire charge unless he is furnished with proof of the portion of the matter to be mailed to persons outside of New York and the destinations of all of the matter to be mailed to persons in New York.

A mailer or a printer-mailer is required to collect the statewide and appropriate local sales taxes on his printing, addressing, and other taxable charges for advertising matter mailed to persons in New York. The mailer or printer-mailer must maintain records showing the portion of the matter he mailed to persons outside New York and destinations of all matter mailed to persons in New York.

The statewide tax and local sales tax at the rate in effect where delivery is made must be collected on the entire charge where printed or other duplicated advertising matter is delivered to the customer in New York even if the customer will subsequently send some or all of the matter to persons outside New York."

Accordingly, because the printed matter will not be sold, the exemption provided by Section 1115(a)(12) of the Tax Law is not applicable. Therefore, Petitioner must pay sales tax on all items of artwork, etc. which may be purchased for use in printing the proposed publication.

If Petitioner instructs the printer to send the printed matter directly to a mailing service for distribution to the ultimate reader, and the mailing service informs the printer of the destinations both within and without New York State to which the mailing is to be sent, the printer may charge Petitioner sales tax on the charges applicable to the printed matter mailed to addresses within New York State only. The fees charged by the mailer for its mailing services would be taxed in the same manner.

If Petitioner takes possession of the printed matter in New York and makes the final distribution to the ultimate reader, all charges applicable to this printed matter will be subject to the state and local taxes in effect at Petitioner's address. Petitioner may apply for a refund or credit of the tax paid on the printed matter subsequently mailed to addresses outside New York State.

The Sales and Use Tax Regulations define a periodical as follows: "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;

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- (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." 20 NYCRR 528.6(c).

Petitioner has not completed development of the format and content of the proposed publication. Therefore, there are insufficient facts upon which to render an opinion as to whether or not the publication will qualify as a periodical. However, Petitioner may petition for such opinion and its impact on this opinion when the format and content have been finalized.

DATED: September 18, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau