

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

TSB-H-80 (172) S  
Sales Tax  
September 10, 1980

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800602A

On June 2, 1980, a Petition for Advisory Opinion was received from Rose Marie Thompson, 12 Helmbold Drive, Schenectady, New York 12303.

The issue raised is whether or not Petitioner is required to collect New York State sales tax on the receipts from sales of Petitioner's publication, which is entitled "Consumer's Bulletin".

A sample of Petitioner's publication, and of the contents of a future issue, were submitted with the petition. Examination reveals Petitioner's publication to consist of a listing of refund offers made by various product manufacturers, letters from readers relative to their experiences as consumers, ads placed by readers and information received in letters from manufacturers. Petitioner states that the bulletin is published more than four times a year, that it is available to the public, that it has continuity as to title and nature of content from issue to issue, that it does not, either singly or when successive issues are put together, constitute a book and that each issue will have articles by different authors devoted to some special industry or other field of endeavor.

Section 1105(c) (1) of the Tax Law imposes a tax on receipts from the sale of the service of 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...." Petitioner's publication consists essentially of a listing of manufacturers' refund offers and related pieces of information. Its sale therefore constitutes the sale of the service of furnishing information. The receipts from the sale of such service are subject to the tax imposed under section 1105(c) (1) of the Tax Law.

Petitioner urges, in effect, that the publication in question is a "periodical." If it were in fact a periodical its sale would constitute the sale of tangible personal property, rather than the sale of the service of the furnishing of information, and the receipts from such sale would be exempt from the tax generally imposed on the receipts from the sale of tangible personal property imposed under section 1105(a) of the Tax Law. Such exemption is provided for by section 1115(a) (5) of the Tax Law, which exempts receipts from retail sales of "newspapers and periodicals." Petitioner's publication, however, constitutes neither.

Section 528.6(c) of the Sales and Use Tax Regulations defines a periodical, in relevant part, 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; (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:... (ii) listings and compilations which constitute information services;...." 20 NYCRR 528.6(c).

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Section 528.6(b) of the Sales and Use Tax Regulations sets forth four criteria which a publication must meet in order to constitute a "newspaper", as follows:

- "...(i) it must be published in printed or written form at stated short intervals, usually daily or weekly;
- (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; and
- (iv) it must contain matters of general interest and reports of current events." 20 NYCRR 528.6(b).

While Petitioner contends that the publication in question contains articles by different authors, in the form of refund offers authored by manufacturers, letters from readers, information received in letters from manufacturers, and ads placed by readers, such offers, letters, information and ads like the brief "filler" items contained in the bulletin, do not in fact constitute "articles" devoted to "literature, the sciences or the arts, news, some special industry, profession, sport or other field of endeavor. It nor do they constitute "reports of current events," within the meaning and intent of the above-quoted provisions of the Sales and Use Tax Regulations. In addition, the publication also fails to satisfy the requirement, contained in such provisions, that it be published at "stated" intervals, for nowhere in the submitted sample does there appear any statement as to its frequency of publication. Inasmuch as the subject publication fails to satisfy the criteria set forth in 20 NYCRR 528.6(b) and (c), quoted above, it does not constitute either a "newspaper" or a "periodical".

Accordingly, receipts from the sale of the subject publication are subject to the tax on the furnishing of information imposed under section 1105(c) of the Tax Law.

DATED: August 19,1980

s/ LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau