

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

TSB-H-80 (258) S
Sales Tax
December 26, 1980

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S801017A

On October 17, 1980 a Petition for Advisory Opinion was received from Rose Marie Thompson, 12 Hembold 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, Issue 8, November, 1980, was submitted with the petition. Examination reveals Petitioner's publication to consist primarily of a listing of refund offers made by various manufacturers. The publication also contains letters from readers, ads placed by readers, housekeeping hints, a recipe, items of general interest, and an explanation of the process of refunding. Information printed in the publication states that it is published the 15th of each month. Petitioner states that the Consumer's 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 numbered issue contains a variety of articles by different authors devoted to literature, science or arts, some specific industry or other field of endeavor.

Section 1105(a) of the Tax Law imposes a tax on the receipts from retail sales of tangible personal property. However, section 1115(a)(5) of the Tax Law exempts from the operation of such provision receipts from the retail sale of newspapers and periodicals. The Sales and Use Tax Regulations define the term 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". 20 NYCRR 528.6(c).

The sample copy of the publication in question meets the requirements set forth in the above-quoted provision of the Sales and Use Tax Regulations. Accordingly, the same constitutes a periodical within the meaning and intent of section 1115(a)(5) of the Tax Law, and the receipts from the sale of such periodical are exempt from the sales tax imposed under section 1105(a) of the Tax Law.

DATED: December 4, 1980

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau