

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

TSB-H-81 (126) S
Sales Tax
July 13, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810320C

On March 20, 1981, a Petition for Advisory Opinion was received from Richard and Mary Pugliese (D/B/A Five Point Grocery), 42 Park Place, Saratoga Springs, New York 12866.

The issue raised is whether Petitioners' receipts from sales of a publication of Saratoga Harness Racing, Inc., entitled "Past Performances," are exempt from New York State sales tax as receipts from sales of newspapers or periodicals, pursuant to Section 1115(a) (5) of the Tax Law.

Section 1105(a) of the Tax Law imposes a tax on the receipts from retail sales of tangible personal property. Section 1115(a) (5) of the Tax Law provides for an exemption from such tax with respect to "newspapers and periodicals."

Section 528.6(b) of the Sales and Use Tax Regulations defines the term "newspaper," in relevant part, as follows: "In order to constitute a newspaper, a publication must conform generally to the following requirements: (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).

Section 528.6(c) of the Sales and Use Tax Regulations defines the term "periodical," in relevant part, 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; (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).

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...."

The publication in question is available to the public at approximately forty locations in New York State and are marketed throughout the United States and Canada.

During the period April 17, 1980, through March 14, 1981, 218 issues of "Past Performances" were published. From April 17 through November 22, issues appeared daily except Sundays and except September 2 through September 6. Also, one Sunday issue was printed as well as a second Saturday issue on July 5. "Past Performances" was published three times each week during the period January 2, 1981 through March 14, 1981. During the calendar year 1981, it is expected that "Past Performances" will be published 213 times.

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER
FRANK J. PUCCIA, DIRECTOR

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The publication neither singly nor when successive issues are put together constitutes a book.

Two hundred eighteen copies of the publication "Past Performances" were submitted with the Petition. Each issue consists primarily of the official program of Saratoga Harness Racing, Inc.'s race track (mostly lists of each horse entered and its prior racing record), repeated information about race track facilities, and information about or advertisements for future races at the track. Most issues also contain one signed article and less than one full page of unsigned short articles on various subjects. The publication has continuity as to title and the nature of its content.

One of the criteria common to the above definitions of the terms "newspaper" and "periodical" is that the publication must be published at stated intervals. The 218 copies of "Past Performances" submitted with the Petition do not contain any statement as to the frequency of publication. Rather than being issued at specific intervals, the publication is apparently issued once for each ten race program presented at Saratoga Harness Racing, Inc.'s facilities.

The items of general interest and reports of current events contained in most of the issues submitted are not substantial either in number or in length. Although Petitioners state that nine different authors contributed articles to the issues submitted, each issue does not contain a variety of articles by different authors. Not only do most issues contain only one signed article, there is no evidence of the existence of a staff of writers regularly preparing unsigned articles for each issue.

Accordingly, the publication at issue does not constitute either a "newspaper" or a "periodical" within the meaning and intent of section 1115(a)(5) of the Tax Law. Petitioners' receipts from the sale of the publication are therefor not exempt from tax pursuant to Section 1115(a)(5). Rather, such receipts are subject to tax as receipts from the sale of either tangible personal property or an information service.

DATED: June 24, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau