

Shopping Papers and Advertising Supplements

Because shopping papers and advertising supplements may be distributed either separately or together, questions have arisen regarding the requirement that advertisements in a shopping paper must not exceed 90% of the printed area of each issue in order for the publication to qualify as a shopping paper. The following is the Department's policy on the application of sales tax to shopping papers and advertising supplements, as a result of Chapter 884, Laws of 1977, effective September 1, 1977.

For purposes of clarification, the term "advertisements" as it relates to shopping papers is defined as all the material for the publication for which the publisher receives consideration and which calls attention to something for the purpose of getting people to buy it, sell it, seek it, or support it. "Advertisements" also include any printed area in which the shopping paper advertises its own services. This is consistent with the United States Postal Service definition of advertising. While the shopping paper's own displays advertising its services would constitute advertising, any forms printed in the paper for the submission of advertisements by readers would not be included as "advertisements." The area devoted to public service announcements, the publication's banner head and the editorial box should not be considered as "advertisements" either, when applying the ninety percent rule; nor should any area provided for free classified advertisements.

Advertising supplements which are distributed with a shopping paper, although considered part of the shopping paper when distributed with it, are not part of such paper for purposes of applying the 90% rule. The 90% rule applies only to the advertising that is purchased from the shopping paper publisher pursuant to its advertising rate schedule for insertion in the shopping paper, and paginated and otherwise printed as an integral part of the shopping paper.

Advertising material handed out with a shopping paper, but not inserted in the shopping paper will qualify for exemption as an advertising supplement as long as it is distributed with an exempt shopping paper. Such separate advertising material will not be counted in applying the 90% test to a shopping paper that was delivered at the same time. Furthermore, the charge by a shopping paper publisher to the advertiser for distribution of the advertising supplement would not be subject to tax.

The 90% rule may not be applied to the issues of a shopping paper on an aggregate annual basis. Each issue must be independently subjected to the 90% test and the other conditions set forth in section 1115(i) of the Tax Law. If fifty issues of a shopping paper pass these requirements during a calendar year, then that shopping paper is exempt for that calendar year.

Different geographic editions of a shopping paper constitute a cumulatively single issue of that paper, as long as the geographic editions appear under the same shopping paper name, under the same date, and bear the same (if any) volume number. These geographic editions must be treated as a single issue of the shopping paper for purposes of applying the tests for a shopping paper, as set forth in the Tax Law.

Section 1115(i) of the Tax Law and section 528.6 of the Regulations provide the following definitions of, and qualifications for, shopping papers and advertising supplements.

SHOPPING PAPERS

Definition - Community publications variously known as consumer papers, penny-savers, shopping guides, town criers, dollar stretchers and other similar publications, distributed to the public without receipt of any consideration, for purposes of advertising and public information.

Qualifications - In addition to the qualifications included in the definition above, the publications must also:

1. be distributed to the public on a community wide basis
2. be published at stated intervals at least 50 times a year
3. have continuity as to title and general nature of content from issue to issue
4. contain in each issue news of general or community interest and community notices or editorial comment or articles by different authors
5. not constitute a book, either singly or when successive issues are put together
6. contain in each issue advertisements from numerous unrelated advertisers
7. be independently owned in that they are not owned by or under the control of the owners or lessees of a shopping center or a merchants association or similar entity, or a business which sells property or services (other than advertising), and the advertisements in such publication are not predominantly for the property or services sold by such business
8. not include advertisements to exceed 90 percent of the printed area of each issue

It should be noted:

Shopping papers which qualify for exemption do not include mail order and other catalogs, advertising fliers, travel brochures, house organs, theatre programs, telephone directories, shopping and restaurant guides, racing tip and form sheets, shopping center advertising sheets and similar publications.

Furthermore, receipts from the retail sale of a shopping paper, as described in this memorandum, are exempt from sales tax. Purchases of printing services, ink, paper, and any other tangible personal property for use in the publication of a shopping paper and which become a physical component of such shopping paper, are also exempt.

ADVERTISING SUPPLEMENTS

Definition - Publications consisting of advertising, printed in the form of newspaper sheets or other form, which are distributed with newspapers, mailed out directly, or used by retail stores as handouts.

Qualifications - When distributed as inserts in a newspaper, periodical, or shopping paper, advertising supplements are considered part of such newspaper, periodical or shopping paper.