

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

TSB-A-93 (33)S
Sales Tax
May 7, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930122A

On January 22, 1993, a Petition for Advisory Opinion was received from Lee Publications, Inc., P.O. Box 121, West Grand Street, Palatine Bridge, New York 13428.

The issue raised by Petitioner, Lee Publications, Inc., is whether the four weekly shopping guides it publishes qualify as geographical editions of the same "shopping paper" and, therefore, are deemed to be a single issue of the shopping paper for the purpose of determining if the publication qualifies for exemption from sales and use taxes pursuant to Section 1115(i) of the Tax Law.

As part of its Petition, Petitioner submitted copies of the May 21, 1990 editions of the Mohawk Valley Pennysaver, the Monday Editor, the Mountain Pennysaver, and the Ulster County Request, now known as the Apple Valley Shopper.

The Monday Editor is published every Monday, fifty-two weeks per year, and, although the masthead states that each issue costs thirty-five cents, it is distributed free to every home in the Schoharie and Northern Delaware County area. It has continuity as to its title and content from issue to issue. The Monday Editor contains news of general and community interest by different authors, as well as, national, State, and local news, weather and sports, editorials, advice columns and obituaries. It does not constitute a book, either simply or if successive issues were put together. Every issue contains advertisements from hundreds of unrelated advertisers, but less than 90% of the printed area is advertisements. The masthead states that it is the "hometown daily newspaper for Schoharie and Northern Delaware Counties" and it is in the sectional format of a typical newspaper. The edition submitted contained forty-six pages.

The Mohawk Valley Pennysaver is published and distributed free each week to homes in the Palatine Bridge, New York area. Of the twenty-four pages printed, a combined area making up one page contains "lawn and garden" news, fishing contest results and girl scout events. The remaining pages contain various advertising.

The Mountain Pennysaver is published and distributed free each week to residents in the Catskill, New York area. The publication contains forty eight pages, of which two pages contain community notes and the remaining printed area of the publication is advertising.

The Ulster County Request is published and distributed free each week to residents in the Saugerties, New York area. The publication has twenty-eight pages of printed material containing various articles of community interest and advertisements. The Ulster County Request is dated Sunday, May 20, 1990, but was delivered by the U.S. Postal Service on Monday, May 21, 1990.

The separate geographic editions and separate names of the publications are due to location and market area forces. The sole purpose of the geographic editions is to allow Petitioner to offer zoned areas for some of the advertisers as well as total market coverage for the advertisers that require it. The format or appearance of each zoned edition is tailored to particular local market. Formats are chosen based on the needs of the local advertisers as well as the competition present in the local market. Many of the advertisers run advertisements in all of geographic edition publications.

Section 1115(i) of the Tax Law provides as follows:

(i)(A) Receipts from the retail sale of a shopping paper to the publisher of such publication shall be exempt from the tax imposed by subdivision (a) of section eleven hundred five and receipts from the sale of printing services performed in publishing such paper shall be exempt from the tax imposed by paragraph two of subdivision (c) of such section.

(B) For purposes of this subdivision, the term "shopping paper" shall mean those community publications distributed to the public, without consideration, for purpose of advertising and public information. To qualify as a shopping paper for purposes of this subdivision the publication must also:

- (1) be distributed to the public on a community-wide basis;
- (2) be published at stated intervals at least fifty 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 the publication is 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; and
- (8) meet the requirement set forth in subparagraph (C) of this subdivision.

(C) The advertisements in such publication shall not exceed ninety percent of the printed area of each issue.

(D) The term "shopping paper" shall not include mail order and other catalogs, advertising fliers, travel brochures, house organs, theatre programs, telephone directories, shipping and restaurant guides, racing tip and form sheets, shopping center advertising sheets and similar publications.

Technical Service Bureau Memorandum, TSB-M-92(5)S provides, in part, as follows:

Geographical Editions

Different geographical editions of the same paper appearing under the same shopping paper name, under the same date and bearing the same, if any, volume number, are deemed to be a single issue of the shopping paper for the purpose of determining if the publication qualifies as an exempt shopping paper under section 1115(i) of the Tax Law.

In some instances, for copyright or other specific purposes, an edition in a particular geographical location may bear a different name and/or volume number other than editions owned and issued by the same publisher under the same date. In such cases, upon request, permission may be given to treat all such shopping papers cumulatively as a single issue for purposes of determining if the publication qualifies as an exempt shopping paper under section 1115(i) of the Tax Law.

Requests are to be made, in writing to:

NYS Tax Department
Technical Services Bureau
Sales Tax Instructions and Interpretations
Building 9
W. A. Harriman Campus
Albany, NY 12227

Specifics must be provided substantiating the reason(s) for the different name and/or volume number. Unless permission is obtained from the Technical Services Bureau, the same name, date of issue and volume number, if any, are required in order for different editions to be cumulatively as a single issue for purposes of applying the tests for a shopping paper as set forth in the Tax Law. (emphasis added)

In order to constitute different geographical editions of the same shopping paper each publication must have continuity as to the features each publication contains. While the Mohawk Valley Pennysaver, the Mountain Pennysaver and the Ulster County Request contain community interest articles, neither of the publications have specific sections of the publication dedicated to national, State and local news, weather and sports, editorials, advice columns and obituaries as does the Monday Editor. Accordingly, pursuant to Section 1115(i) of the Tax Law and TSB-M-92(5)S the four shopping guides Petitioner publishes do not constitute different geographical editions of the

TSB-A-93 (33)S
Sales Tax
May 7, 1993

same shopping paper and as such are not deemed to be a single issue of the shopping paper for the purpose of determining if a publication qualifies as an exempt shopping paper.

DATED: May 7, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.