

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

TSB-A-97(24)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950620A

On June 20, 1995 a Petition for Advisory Opinion was received from Value Line Publishing, Inc., 220 East 42nd Street - Room 6001, New York, New York 10017-5891.

The issue raised by Petitioner, Value Line Publishing, Inc., is whether the sale of its publication, "The Value Line Investment Survey," is exempt as a periodical under §1115(a)(5) of the Tax Law.

Petitioner makes the following submission of facts.

Petitioner's Investment Survey is produced by a staff of about 120 persons. Persons highly experienced in financial matters serve as editors and analyst/writers. It is published and distributed weekly through subscription to the general public through the mail, and it qualifies for second-class postal mailing privileges.

The publication consists of three parts, each of which is published and distributed every week. Each weekly issue is copyrighted. The three parts are: Part 1 Summary and Index section, Part 2 Selection and Opinion section, and Part 3 Ratings and Reports section.

The three parts of the publication are described as follows.

Part 1 - Summary and Index.

Part 1 consists of approximately 40 pages. Each week, it provides a list of 1,700 stocks followed by the Investment Survey with each stock's latest quarterly earnings and dividend as compared with a year ago, its Timeliness Ranking measuring probable price performance during the next 6 to 12 months on a scale from 1 (highest) to 5 (lowest), its Safety Ranking measuring the risk of a stock also on a scale from 1 (safest) to 5 (riskiest), its estimated price range over a 3 to 5 year period, and various other data and information which is updated each week.

The Summary and Index also contains 19 weekly screens of stocks which the Investment Survey follows. These are grouped according to specific criteria such as timely stocks in timely industries, timely stocks (those rated 1 and 2 for performance), conservative stocks (those rated 1 and 2 for safety), high yielding stocks, and stocks with high estimated 3 to 5 year appreciation.

Part 2 - Selection & Opinion.

Each weekly edition of part 2 brings to subscribers current articles and investment ideas on subjects meriting special attention. It is 10 pages in length and contains the following sections.

(1) Value Line View. This appears on the front page. It reviews current business prospects and analyzes economic and political trends affecting the stock market. It concludes with the Investment Survey's views as to the allocation of the subscriber's investments between timely equities and cash reserves.

(2) Stock Highlight. This provides subscribers with an article providing a detailed explanation why a particular company's stock ranked 1 (highest) for timeliness is attractive. This article provides more background information on the company and its stock than is included in the weekly reports which the subscriber receives in the Part 3 Ratings & Reports.

(3) Other Articles And Portfolios. The Selection and Opinion Part also contains other articles of current interest on subjects such as "Selection for Income" discussing the stock of a company with high safety and above-average estimated dividend growth, as well as three portfolios of stocks selected and monitored by named analysts: "Portfolio I: Stocks For Performance," "Portfolio II: Stocks For Performance And Income," and "Portfolio III: Stocks For Long-Term Growth." Occasionally, Part 2 also contains articles focusing on national economies other than the United States, as, for example, "Update: China" in the March 24, 1995 issue and "Update: Mexico" in the February 17, 1995 issue.

(4) Special Features. Each quarter, Part 2 contains an "Economic Review" which is a detailed analysis of developments and a forecast for the U.S. economy and, semi-annually, "Value Line Industrial Composite" polling data on 900 companies that provide a yardstick for measuring the past performance and future prospects of American industry. The performance of the Value Line ranking system is reviewed twice a year and its use as an investment strategy is compared to other portfolio themes once each quarter. Once a month the "Investor's Datebook" alerts subscribers to significant upcoming economic and investment events (see p. 8122 of April 28, 1995 issue of Part 2). Occasionally, there are also articles examining major trends in the economy, the balance of trade, inflation, exchange rates, foreign markets, etc. These are typically prepared and signed by an expert analyst or research director.

(5) Market monitor. This statistical section keeps investors abreast of trends in market indexes, trading volume, financial strength ratings of companies, key interest rates, best-performing and worst-performing industries, etc.

Part 3 - Ratings and Reports. Each weekly edition of Part 3 consists of approximately 142 pages. There are approximately 130 one-page reports on specific companies in each issue including commentary signed by an analyst who follows that company. The companies are grouped by industry. Preceding each industry group is a one-page article discussing current developments affecting that industry. Over the course of 13 weeks, Part 3 contains an up-to-date article on each of the 1,700 companies in the Value Line universe (i.e., 130 companies per week x 13 weeks), thereby affording the subscriber a rolling quarterly view of all these companies. Each report includes pertinent financial and other data on the company plus an analysis by the Value Line analyst together with ratings on the company's financial strength, the stock's price stability, the stock's price growth persistence, and the company's earnings predictability.

The final section of Part 3 contains supplementary reports of late-breaking news on companies not covered in depth in that week's issue.

A large binder is distributed to a new subscriber so that the most recent 13 weekly Part 3 issues covering, in the aggregate, all 1,700 stocks in the Value Line universe can be conveniently retained in one place. If the subscriber is interested in only a limited number of the stocks, he or she may, of course, retain only those issues of the most recent 13 weeks which have discussed companies with which he or she is concerned.

An additional smaller binder is provided to each new subscriber for the weekly issues of Part 2, Selection and Opinion, if the subscriber should wish to retain them for a time in one convenient place.

Petitioner has been collecting sales tax on the sale of its publication to its subscribers.

Section 1105 of the Tax Law states, in part:

Imposition of sales tax. . . there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

Section 1115(a)(5) of the Tax Law provides an exemption from sales and use tax for newspapers and periodicals.

Section 528.6 of the Sales and Use Tax Regulations states, in part:

Newspapers and periodicals (Tax Law, section 1115(a)(5)).
Exemption. The sale of ... periodicals is exempt from sales and compensating use tax.

* * *

(c) Definition of a periodical. (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; and
- (v) each issue must contain a variety of articles by different authors devoted to literature, the sciences or the arts, some special industry, profession, sport or other field of endeavor.

(2) A publication which may be known as or considered to be a newsletter may qualify as a periodical if it conforms to the above standards. Where a newsletter has no signed articles, but has a staff of writers who originally prepare articles, such publication will be considered to have articles by different authors. If a publication has been classified by the United States Postal Service as one which is entitled to second class mailing privileges, that fact will be considered in determining whether or not the publication is a periodical.

Petitioner has been collecting sales tax on the sales of its publication, "The Value Line Investment Survey". The publication (1) is published in printed form at stated intervals at least four times a year, (2) does not constitute a book, (3) is available for circulation to the public, (4) has continuity as to title and general nature of content and (5) contains a variety of articles by different authors. Although the publication contains compilations of data, the data generally support, relate specifically to and are complementary to the analytical articles, supporting a conclusion that the publication may qualify as a periodical under Section 1115(a)(5) of the Tax Law and 20 NYCRR 528.6(c). Accordingly, as long as the publication continues to materially conform to that presented in the petition, Petitioner will no longer have to collect sales tax on the sales of its publication to subscribers.

DATED: April 11, 1997

/s/
JOHN W. BARTLETT
Deputy Director
Technical Services Bureau

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