

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-08(14)S
Sales Tax
March 19, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S070615A

On June 15, 2007, the Department of Taxation and Finance received a Petition for Advisory Opinion from Gimme Credit Publications Inc. and Gimme Credit LLC, 17 State Street, 7th Floor, New York, New York 10004. Petitioners, Gimme Credit Publications Inc. and Gimme Credit LLC, provided additional information pertaining to the Petition on October 23, 2007.

The issue raised by Petitioners is whether sales of their newsletters are sales of periodicals exempt from sales and use tax.

Petitioners submitted the following facts as the basis for this Advisory Opinion.

Gimme Credit Publications Inc., a Delaware corporation, and its successor, Gimme Credit LLC, a Delaware limited liability company, (collectively, "Company") publish a daily newsletter (hereinafter "Newsletter") which focuses exclusively on in-depth coverage of fixed income financial markets. Newsletter contains news, analysis, and recommendations specific to corporate bond offerings of publicly traded debt securities by major U.S.-based corporations, targeted to high level and sophisticated users in the finance field.

On the cover page of each daily Newsletter there is a one-paragraph synopsis of the articles contained on the following pages. The length of Newsletter has increased over the years from two daily articles to about four to five. The articles are written by a number of different authors and the author's name is printed under the title of each article. Company's name, logo, and the date of the issue appear on the upper left corner of the cover page. Each of the following pages contains one full-length article. The date of the issue and author's name are printed across the top of each of these pages, and Company's name and logo are positioned down the left-hand margin. Each issue is copyrighted.

The articles are analytical and have high editorial content. The authors report on news and recent developments affecting a company's financial position based on information collected from various sources. Detailed explanations and analyses of the relevant issues are provided along with a forecast of the effect these issues have on movement of the company's bond price, and an investment recommendation is made based on the author's analyses and opinions. For example, a September 13, 2005, article entitled "Life is a Journey" signed by a staff writer reported on a consumer products manufacturer's two new strategic initiatives, analyzed its past revenue gains, explained the reasons for the improvement in the company's gross margin, forecasted the likely usage of its excess cash, and ended with an investment recommendation.

Newsletter may also contain an article or feature story focused on issues of general economic or financial interest within a specific industry or market segment, such as the article entitled "Insurers: Katrina Exposure" in the same September 13, 2005, issue, signed by another staff writer which examined the impact of Hurricane Katrina on the insurance industry.

Newsletter is generally published 5 days a week for 48 weeks of the year. Each Newsletter is available to the general public on an annual or quarterly subscription basis. Newsletter is not available on newsstands. Most subscribers are fixed income and debt securities departments, desks, or divisions of major, regional, and boutique financial institutions. However, a number of subscribers are individuals and non-financial institutions with interests in the fixed income financial markets.

Newsletter is offered to subscribers in a choice of four formats: (i) electronic mail (ii) facsimile delivery (iii) overnight delivery in hard copy format or (iv) messenger in hard copy format. When Company was first established in 1994, there was no electronic distribution of Newsletter. Over time, the prevalent mode of distribution evolved from overnight, messenger, and facsimile delivery to electronic delivery. Today, the majority of subscribers opt to receive their Newsletters by electronic mail, but Newsletter is always available in tangible paper editions. Petitioners assert that the paper editions and the electronic editions are identical.

Petitioners submitted sample copies of the print version of Newsletter as part of the Petition. Examination of these sample copies reveals that Newsletter does not contain advertisements.

Applicable law and regulations

Section 1101(b)(6) of the Tax Law defines tangible personal property, in part, as:

Corporeal personal property of any nature. . . . Such term shall also include newspapers and periodicals where the vendor ships or delivers the entire edition or issue of the newspaper or periodical, with or without the advertising included in the paper edition or issue, but not including anything, other than advertising, not in such paper edition or issue, to the purchaser by means of telephony or telegraphy or other electronic media, but only where the amount of the sale price to such purchaser of such newspaper or magazine or the subscription price, in the case of a subscription to a newspaper or periodical, including any charge by such vendor for shipping or delivery to the purchaser, is separately stated to such purchaser.

Section 1105 of the Tax Law provides, in part:

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

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

* * *

(c) The receipts from every sale, except for resale, of the following services:

(1) 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, . . .

Section 1115(a) of the Tax Law provides, in part:

Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(5) Newspapers and periodicals.

Section 528.6 of the Sales and Use Tax Regulations (Regulations) provides, in part:

(a) Exemption. The sale of newspapers and 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, news, 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.

(3) Nothing in this section shall be construed to exempt as a periodical the following:

- (i) advertising material, such as catalogs, flyers, pamphlets and brochures;
- (ii) listings and compilations which constitute information services;
- (iii) publications which are issued at stated intervals but which are books or parts of a book.

Opinion

Company publishes hardcopy and electronic versions of Newsletter. The Petition asserts that (1) Newsletter is generally published 5 days a week for 48 weeks of the year; (2) Newsletter accepts a subscription from anyone who pays the subscription fee; and (3) articles or materials contained in Newsletter are written or prepared by Company's staff of writers. Newsletter is not available on newsstands.

Examination of the sample copies of Newsletter indicates that it does not either singly or when successive issues are put together constitute a book or reference manual. Newsletter, therefore, appears to meet the requirements for being a periodical publication pursuant to section 528.6(c)(1)(ii) of the Regulations.

It also appears from the examination of Newsletter that it has continuity of literary character, subject matter, style, and format; and thus the publication meets the periodical requirements of section 528.6(c)(1)(iv) of the Regulations.

Petitioners state that Newsletter accepts a subscription from anyone who pays the subscription fee. It appears that even though Newsletter is not sold on newsstands, it is available to the general public by subscription for the purposes of section 528.6(c)(1)(iii) of the Regulations. See *American Theater Press, Inc.*, Adv Op St Tx Comm, August 7, 1981,

TSB-A-81(7)S for a discussion of the requirement that a publication must be available to the public.

Based on the representations of Petitioners and an examination of the sample copies provided, it appears that a printed edition of Newsletter generally meets the requirements of an exempt periodical set forth in section 528.6(c)(1) of the Regulations. The hardcopy version of Newsletter, therefore, qualifies as an exempt periodical under section 1115(a)(5) of the Tax Law.

For the electronic version of Newsletter to be exempt from sales and use tax, there must be available for sale a tangible paper (hardcopy) edition or issue of Newsletter. Petitioners assert that the hardcopy version of Newsletter is available by overnight delivery or messenger service. The electronic transmission as delivered must, with the exception of advertisements, contain the whole content of the print edition or issue. In addition, the electronic version cannot, with the exception of advertisements, include anything which is not in the hardcopy version; e.g., additional comments published throughout the day that are not part of the print version, credit scores added as they are announced, and data downloads of information that are not part of the print version. See section 1101(b)(6) of the Tax Law, and *The Bureau of National Affairs, Inc.*, Adv Op Comm T&F, August 6, 1998, TSB-A-98(55)S. Accordingly, if the subscription to the electronic version of Newsletter includes information (other than advertising) not included in the hardcopy version, or if the subscription for the hardcopy version of Newsletter provides the customer with information (other than advertising) not included in the electronic version, the charge for the subscription to the electronic version will be subject to sales tax under section 1105(c)(1) of the Tax Law. See *CCH Incorporated, c/o Wolters Kluwer U.S. Corporation*, Adv Op Comm T & F, April 1, 2003, TSB-A-03(13)S. However, provided that the hardcopy version and the electronic version of Newsletter are identical, the electronic version of Newsletter is exempt from sales tax under section 1115(a)(5) of the Tax Law. Copies of Newsletter must be retained for Company's records.

DATED: March 19, 2008

/s/
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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.