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Union's Benefit Booklet is Not Printed Promotional Material

The issue raised is whether the cost of printing and distributing membership benefit information booklets qualifies for the exemption from sales and use tax under section 1115(n)(4) of the Tax Law for printed promotional materials.

An employee union (the Union) purchases the printing of a benefit information booklet that will be distributed to the Union's members. The membership benefit information booklet (booklet) is a comprehensive guide to the services and benefits offered to the Union's members.

The booklet is divided into 10 sections:

- **General Information**—This section lists and describes eligibility rules, enrollment information, coverage rules, coordination of benefits, forms and claim submission, and provides general questions and answers.
- **Dental Plan**—This section lists and describes the different dental benefit plan options provided and how a member can choose and enroll in a dental plan. The section also provides information as to how each of the available plans may be used with either a participating dentist or a non-participating dentist and the dental procedures that are not covered under the plans.
- **Prescription Drug Plan**—This section lists and describes the various plan options, how a member might use the different plan options, and who and what are covered.
- **Optical Plan**—This section lists and describes the participating provider and non-participating provider plan options, how a member might use each of the plan options, and what persons (member, spouse, children, etc.) and services are covered.
- **Hearing Aid Benefit Plan**—This section lists and describes the participating provider and non-participating provider plan options, how members may use each of the plan options, and who and what are covered.
- **Disability Plan**—This section lists and describes who and what are covered and explains how persons apply for benefits.
- **Death Benefit**—This section describes available death benefits, how a member designates a beneficiary, and how benefits are paid.

- Continuation of Coverage—This section lists and describes the various options for alternative coverage when there is a lapse or termination of a member's coverage.
- Supplemental Benefits—This section lists and describes additional coverage available to members, who is covered, and how to apply for supplemental benefits.
- Resources—This section contains a list of various other benefits that a member may use (hotel discounts, credit cards, etc.) with contact information, such as phone numbers and Web sites, applicable to such benefits.

The booklet displays the Union's logo and a message from the Union president is printed on the first two pages of the booklet.

The Union contracts with an outside vendor to print the booklets. The vendor then mails the booklets via common carrier or the U.S. Postal service to the members eligible for the benefits provided by the Union in envelopes that are imprinted with the Union's address and logo. In addition, some booklets are available to be picked up at various sites, including the Union's offices. The booklets assist members in using the services provided through the Union.

Applicable law and regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(12) Promotional materials. Any advertising literature, other related tangible personal property (whether or not personalized by the recipient's name or other information uniquely related to such person) and envelopes used exclusively to deliver the same. Such other related tangible personal property includes, but is not limited to, free gifts, complimentary maps or other items given to travel club members, applications, order forms and return envelopes with respect to such advertising literature, annual reports, prospectuses, promotional displays and Cheshire labels but does not include invoices, statements and the like. Promotional materials shall also include paper or ink furnished to a printer for use in providing the services of producing, printing or imprinting promotional materials or in producing, printing or imprinting promotional materials, where such paper and ink become a physical component part of the

promotional materials and such printer sells such services or such promotional materials to the person who furnished the paper and ink to such printer.

Section 1115(n)(4) of the Tax Law provides:

Notwithstanding any contrary provisions of paragraph one of this subdivision, promotional materials which are printed materials and promotional materials upon which services described in paragraph two of subdivision (c) of section eleven hundred five have been directly performed shall be exempt from tax under this article where the purchaser of such promotional materials mails or ships such promotional materials, or causes such promotional materials to be mailed or shipped, to its customers or prospective customers, without charge to such customers or prospective customers, by means of a common carrier, United States postal service or like delivery service.

Opinion

The Union provides its members with a copy of its benefit information booklet. The booklet includes descriptions of the benefits the Union provides to its members and contains information as to how members may avail themselves of such benefits. An outside vendor is contracted to print the booklets and to mail them to the Union's members. The booklets are delivered via common carrier or the US Postal Service to the Union's members. In addition, some booklets are available to be picked up at various sites, including the Union's offices. The booklets assist and direct the members in using the benefits provided to them through the Union.

The exemption for promotional materials provided in section 1115(n)(4) of the Tax Law is for printed promotional materials delivered by common carrier, United States Postal Service, or like delivery service to customers or prospective customers of the purchaser of the materials without charge to such customers or prospective customers. *Promotional materials* are defined in section 1101(b)(12) of the Tax Law as advertising material, other related tangible personal property, and envelopes used exclusively to deliver the same. Though the booklets in this case are printed materials provided to the members without charge, the booklets in this case are not advertising material or promotional in nature. For example, the section of the booklet explaining the Dental Plan is not a solicitation by the provider of the dental plan that it be chosen by the members over a different dental plan, nor is it a solicitation by the Union to the members that they participate in a particular dental plan over another. The booklet is merely an explanation of the benefits available to members and how they can receive such benefits. Accordingly, the booklet is not promotional material as defined in section 1101(b)(12) of the Tax Law.

Even if the booklet were printed promotional material, to qualify for the exemption provided in section 1115(n)(4) of the Tax Law, printed promotional materials must be mailed or shipped to a person who is considered to be a *customer* or prospective customer of the purchaser of the promotional materials. The members of the Union who receive the booklet by reason of

their membership in the Union are not customers or prospective customers of the Union. See *Town of Islip Republican Committee*, Adv Op Comm T&F, March 3, 1999, TSB-A-99(15)S.

Accordingly, the amounts paid to an outside vendor for printing and distributing the booklets in this case are not exempt from sales and use tax under section 1115(n)(4) of the Tax Law.

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