

DOR Home

For Individuals and Families

For Businesses

For Local Officials

For Tax Professionals

Home > Businesses > Help & Resources > Legal Library > Letter Rulings > Letter Rulings - By Year(s) > (1990-1994) Rulings >

Letter Ruling 91-5: Sales of Resource Directories Under G.L. 64H, s. 6(m)

August 28, 1991

You request a letter ruling on the application of the Massachusetts sales tax, G.L. c. 64H, to the sale of ("the Publication") an annual publication containing information on various resources for children living in a particular geographic area. Specifically, you ask whether the Publication qualifies for exemption from sales tax under G.L. c. 64H, § 6(m) as a sale of a "magazine." For reasons discussed below, we rule that the Publication is not a "magazine" within the meaning of G.L. c. 64H, § 6(m), and that sales of the Publication are subject to tax.

Facts

The Publication, printed on 8 1/2" by 10 3/4" stock with a full color illustrated soft cover, identifies itself as a "Town Pages", "the 'where to find it' book," and a "community resource - a comprehensive guide written for parents by parents." Similar in format to the "Yellow Pages" published by various telephone companies, it contains sixty-four pages of listings of a variety of resources for children residing in a thirty town area. These listings, arranged alphabetically by topic and by town, include such items as child care providers, health services, town-sponsored family activities, camps, museums, bowling lanes, and horseback riding stables.

In addition, the Publication contains listings and advertisements from businesses that cater to families residing within these towns, as well as a list of the Publication's sponsors. Businesses catering to the families residing in these towns are entitled to a listing under the category of their choice.

In addition to listings and advertisements, the Publication includes a total of two pages devoted to first aid and poison prevention sponsored by two Health Maintenance Organizations, and two pages devoted to resources for special needs children, prepared by a non-profit agency that provides information, referral, and problem-solving assistance on disability-related issues. Aside from these items, the Publication contains no stories, poetry, essays, news, articles, or other items generally found in magazines. The Publication generates its revenues from advertising fees and a \$3.00 cover price. Approximately 30,000 copies of the Publication are printed and updated on an annual basis.

Discussion

Massachusetts General Laws Chapter 64H imposes a five percent sales tax on all retail sales of tangible personal property, unless otherwise exempt. See G.L. c. 64H, § 2. Exempt from sales tax are

"[s]ales of newspapers, magazines, books required for instructional purposes in educational institutions, books used for religious worship, publications of any corporation, foundation, organization or institution [which is exempt from taxation under Internal Revenue Code Section 501(c)(3) and which meets the requirements of G.L. c. 64H, § 6(e)], and motion picture films for commercial exhibition."

SEARCH

Select an area to search

Search

G.L. c. 64H, § 6(m).

A newspaper is defined as "a paper distributed at stated periodic intervals, and containing news and other matters of interest to a significant segment of the public." See Newspapers regulation, 830 CMR 64H.6.3(1). However, the term "magazine" is not defined by Massachusetts tax statutes or regulations. In the absence of such a definition, the Massachusetts Supreme Judicial Court, Appellate Tax Board and the Department of Revenue have considered the format, content, and authorship of various publications in determining whether they qualify for the exemption as newspapers or magazines. See e.g., *Greenfield Town Crier v. Commissioner of Revenue*, 385 Mass. 692, 696 (1982), *Robert Welch, Inc. v. State Tax Commission*, A.T.B. Docket No. 79965 (Oct. 14, 1977); Letter Ruling 90-2, 85-58, 83-14, 81-95.

In looking at the legislative purpose in dealing specifically with magazines, the Supreme Judicial Court has noted that "[c]ourts generally have defined magazines as a subspecies of periodicals, emphasizing their periodicity, their continuity as to title and nature of contents from issue to issue, and their authorship usually by an editorial staff rather than by a single author." *Comm. v. Zone Book, Inc.*, 372 Mass. 366 (1977), citing *Fifield v. American Auto Ass'n*, 262 F. Supp. 253, 255-257 (D. Mont. 1967).

The Appellate Tax Board has stated that words such as "magazines" should be construed according to their common and approved usage. *Stanley Home Products, Inc. v. Commissioner of Revenue*, A.T.B. Docket No. 120842 (1986), citing G.L. c. 4, § 6. In that case, the Board noted that the term "magazine" has been defined as "a publication usually with a paperback, and sometimes illustrated, that appears at regular intervals and contains stories, articles, etc. by various writers, and usually advertisements." *Id.* (quoting *Webster's New World Dictionary, Second College Edition* (1972)). In *Welch, supra*, an earlier case, the Appellate Tax Board stated that determining whether a publication was a magazine "is really an application of common sense--of common understanding of the terms rather than checking off one by one the various indicia of characteristics."

The Department of Revenue has issued a number of Letter Ruling that have examined various publications to determine whether they qualify as a newspaper or magazine, for sales and use tax purposes. The Department has ruled that a magazine, like a newspaper, must contain news and matters of interest to a significant segment of the public. See Letter Ruling 85-58, 84-8, 84-67. Additionally, the Department has ruled that according to the common and approved usage of the language, a publication must contain stories, articles, or other features in addition to advertising in order to qualify as a magazine. See DOR Directive 87-6.

The Publication at issue exhibits some of the characteristics commonly attributed to magazines. First, the outside cover format resembles that of other publications generally recognized as magazines. It is printed on an illustrated, full-color, soft cover similar in size to many publications that are commonly recognized as magazines. Second, the fact that 30,000 copies are published for general distribution to a thirty-town area indicates that it has general availability to the public. Third, it appears to have continuity of title and general nature of content from year to year. Fourth, it does not constitute a book, either singly or when successive issues are put together. The Massachusetts Supreme Judicial Court, distinguishing "books" from magazines" within the meaning of G.L. c. 272, §§ 28-32, looked to the words' usual and accepted meanings that are consistent with statutory purpose, such as their use in other legal contexts and dictionary definitions. The Court concluded that a substantial printed publication is a book when its contents are complete in themselves, deal with a single subject, betray no need of continuation, and, perhaps, have an appreciable size. *Comm v. Zone book, Inc.*, 372 Mass. 366, 371 (1977), citing *Smith v. Hancock*, 226 U.S. 53, 59 (1912). This publication is clearly not a book.

These similarities notwithstanding, the Publication differs in significant respects from publications that are commonly accepted as magazines. First, while it appears at stated periodic intervals, its annual publication format does not exhibit the degree of periodicity generally attributed to magazines by the Appellate Tax Board, the Department of Revenue, and other jurisdictions. See, e.g. *Stanley Home Products, supra*, Sales and Use Tax Memo 1970-2 (quarterly publication required); *Moody's Investors Service, Inc. v. Department of Revenue*, 112 Ill. App. 3d 1024; 445 N.E.2d 1331; 68 Ill. Dec. 478 (1983); *Illinois Department of Revenue Private Letter Ruling* 84-0496, 84-1121; *American Theatre Press, Inc. v. State of New York*, 57 NY2d 794; 441 N.E.2d 1105; 455 N.Y.S.2d 587 (1982). For example, the Illinois Department of Revenue has ruled that

"[T]here is one test which must be met and a variety of lesser tests that should be considered in determining whether a publication is a magazine and consequently not subject to sales tax. The test

which must be met is that the publication must come out periodically and must be published on more than an annual basis."

See e.g., Private Letter Ruling 84-1121 (Nov. 5, 1984).

In New York, the New York State Tax Commissioner has long required that a publication must appear at stated intervals at least four times a year. A publication that fails to meet this requirement, even if it meets all of the other requirements of the regulation, does not qualify for an exemption as a periodical. See 20 NYCRR 528.6(c); Matter of Promenade Magazines, Inc., New York State Tax Commissioner, (Slip Op. Oct. 2, 1985); American Theatre Press, Inc. v. State of New York, 57 NY2d 794; 441 N.E. 2d 1105; 455 N.Y.S. 2d 587 (1982); Matter of Burr and Sons, New York State Tax Commission, (Slip Op. Sept. 23, 1974).

Consistent with Sales and Use Tax Memo 1970-2 and Welch, supra, we view quarterly publication format as one, but not the sole, criterion for determining whether a publication qualifies as a magazine. Content, in particular, is also very significant. A publication must contain stories, articles, or other features in addition to advertising to qualify as a magazine. See DOR Directive 87-6. In this instance, the contents of the Publication differ significantly from other publications that are commonly accepted as magazines. The Publication contains no item that amounts to an article, composition, or miscellaneous paper as envisioned by the Appellate Tax Board in Stanley Home Products, supra, (quoting Houghton v. Payne, 194 U.S. 88, 101 (1904)). The one page items with information on poison prevention and choking appear on pages entitled "resource pages," and are placed directly above the names, addresses and telephone numbers of the Health Maintenance Organizations that sponsor the page. Similarly, the two "resource pages" on special needs children contain public service information, prepared by a non-profit agency in a question and answer format, that is designed to advertise its own, as well as other programs' resources, such as private transportation, lift vans and escort services. These "resource pages" constitute advertising rather than the stories, articles, or news envisioned in Stanley Home Products, supra, and Letter Ruling 85-58.

Essentially, the Publication merely contains alphabetical lists of resources, followed by addresses and telephone numbers. These listings constitute reference information, designed for repeated use over a certain period of time. Buyers will purchase this publication not because it contains new and current information, but rather because it contains reference information that is presumably of more than passing value. The Department has ruled previously that such publications are not "magazines" within the meaning of G.L. c. 64H, § 6(m). See Letter Ruling 84-8 (1984).

Viewed as a whole, the publication more closely resembles a "resource directory" than a magazine. In Telepages, Inc. v. Baldwin, ("Telepages") 9 N.J. Tax 30 (Feb. 23, 1987), the New Jersey Tax Court examined directories similar to the publication in question. The directories, which were published every twelve to fifteen months, contained standard business and professional listings, public service information, sports information, emergency phone numbers and general information. The Court concluded that such directories were not exempt from New Jersey sales and use tax as either "magazines" or "periodicals." Acknowledging that neither case law nor legislative history addressed the question of whether these directories constituted periodicals within the meaning of its statute, the Court indicated that "[d]irectories fundamentally differ from periodicals like newspapers and magazines," because the word "periodicals" does not refer to publications which have the primary purpose of advertising. Id. (citations omitted). The Court further noted that the information and non-advertising portions of the directories were "merely incidental to, and designed to increase the effectiveness of, the advertising portions." Id. Moreover, the Court distinguished new editions of directories, which merely update the same body of information, from new issues of periodicals like newspapers and magazines, which have the primary purpose of transmitting entirely new information and topics. Id.

As in Telepages, the information contained in the resource pages of this publication is merely incidental to, and designed to increase the effectiveness of, the advertising of the pages' sponsors. Furthermore, each new edition updates essentially the same body of information, rather than transmitting entirely new information and topics. Such a publication reasonably cannot be considered a magazine.

Conclusion

The publication differs from publications commonly perceived as magazines in two important respects: content and format. First, its content includes no items that could be characterized as news, stories, articles, or other features as required by the Appellate Tax Board, and previous Department of Revenue public written statements. Second, the annual publication format is markedly different from the publication formats of magazines in general. For these reasons, the Publication is

not a "magazine" within the meaning of G.L. c. 64H, § 6(m), and its sales are subject to tax.

Very truly yours,
/s/Mitchell Adams
Mitchell Adams
Commissioner of Revenue
August 28, 1991
LR 91-5