



December 27, 2013
Pennsylvania Sales and Use Tax
No. SUT-13-002
Shopping Guides and Inserts

ISSUE

- A. Is Taxpayer's purchase of paper and ink used by Taxpayer to print the Taxpayer's shopping guide subject to Pennsylvania Sales and Use Tax?
- B. Is Taxpayer's sale of a shopping guide to another shopping guide publisher subject to Pennsylvania Sales and Use Tax?
- C. Is Taxpayer's sale of advertising flyers inserted in shopping guides subject to Pennsylvania Sales and Use Tax?

CONCLUSION

- A. Taxpayer's purchase of paper and ink used by Taxpayer to print the Taxpayer's shopping guide is subject to Pennsylvania Sales and Use Tax.
- B. Taxpayer's sale of a shopping guide to another shopping guide publisher is subject to Pennsylvania Sales and Use Tax.
- C. Taxpayer's sale of advertising flyers inserted in shopping guides is subject to Pennsylvania Sales and Use Tax.

FACTS

The facts as you partially presented them are as follows:

Taxpayer is a printer located in Pennsylvania. Taxpayer prints a daily newspaper and several shopping guides owned by Taxpayer. Taxpayer also prints shopping guides sold to other shopping guide publishers. All shopping guides are free to consumers and are delivered either through display racks or are carrier delivered. Taxpayer prints advertising flyers for grocery stores. The advertising flyers are sold to the grocery stores and inserted by Taxpayer into shopping guides. Taxpayer purchases paper and ink used to print shopping guides and advertising flyers.

DISCUSSION

Sales and use tax is imposed on the sale or use of any tangible personal property unless specifically exempted from tax under Article II of the Tax Reform Code of 1971("TRC"), 72 P.S. § 7201, et. seq.

Shopping guides are tangible personal property and their sale is subject to sales tax unless an exemption applies. The Department of Revenue's regulation at 61 Pa. Code §31.29, entitled "Books, Publications and Advertising Materials" provides as follows:

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Advertising insert—Printed advertising material that is circulated with another publication.

Advertising literature or materials—Tangible personal property that is intended to promote business interest, create goodwill or engage the attention or interest of a recipient.



(i) The term includes printed matter, brochures, matchbooks, calendars, price lists, video and audio tapes, computer disks, investment prospectuses, financial and corporate annual reports, electoral literature or materials, playing cards, envelopes, address labels, reply envelopes, application forms, pens and similar promotional materials.

(ii) The term does not include proxy materials.

Circulated among the general public—Made available for purchase from a retail outlet, such as a newsstand or bookstore, or made available for purchase by subscription. In the case of an organizational publication, the publication will be considered to be circulated among the general public only if there are regular sales of the publication to purchasers other than members of the organization.

Direct mail advertising literature or materials—Advertising literature or materials that are distributed directly to intended recipients through the United States Postal Service. The term does not include advertising literature or materials that are distributed in a manner other than by the United States Postal Service.

Magazine—A publication that is published at regular intervals not exceeding 3 months, that is circulated among the general public, and contains matters of general interest and reports of current events that are published for the purpose of disseminating information of a public character or is devoted to literature, the sciences, art or some special industry. The term does not include loose leaf information services.

Mail order catalogue—A publication that contains a listing of items with descriptive details and includes a mail order form and is distributed through the United States Postal Service.

Newspaper—A “legal newspaper” or a publication containing matters of general interest and reports of current events that qualifies as a “newspaper of general circulation” authorized to carry a “legal advertisement” as those terms are defined in 45 Pa.C.S. § 101 (relating to legal notices). The term does not include magazines.

Publication—Information transferred by means of tangible media.

(i) Examples include printed material, such as books; financial and corporate annual reports; investment prospectuses; proxy materials; shopping guides; magazines; tabloid newspapers; and printed material that may supplement, explain, amend, revise or otherwise alter, expand or render current a looseleaf information service, or a book or bound volumes of books previously issued, including a supplement or pocket part, whether the additional material is periodically distributed or purchased independently of the basic book to which it is applicable.

(ii) The term also includes video and audio tapes, computer disks and similar items.

Religious publication—Religious commentaries and other publications primarily devoted to religious instruction, promotion or information.

Shopping guide—A publication primarily devoted to consumer awareness, promotion or information and that is generally provided to a consumer free of charge.

Subscription—The advance purchase of a series of issues of a magazine delivered by the publisher to an address designated by the purchaser.



(i) The term includes a series of magazines provided by an organization to its members in consideration of the payment of membership dues, provided the magazine is also sold by subscription or by individual copy to the public.

(ii) The term does not include a purchase of an issue or series of issues of a magazine from a person other than the publisher.

Textbook—A new or used book that is required or approved for use in conjunction with an educational curriculum provided by an institution of learning recognized by the Department of Education.

(b) *Scope.*

(1) Except as otherwise provided in this subsection, the sale at retail or use of publications, advertising inserts, Bibles, religious publications, including religious publications sold by religious organizations and advertising literature or materials is subject to tax when delivered to a location within this Commonwealth.

(2) The sale at retail or use of the following items is exempt from tax:

(i) Mail order catalogs.

(ii) Direct mail advertising literature or materials. See § 32.36 (relating to printing and related businesses).

(iii) Textbooks.

(iv) Newspapers.

(v) Magazines sold by subscription.

(vi) Advertising inserts that become a part of a newspaper or magazine.

(vii) One time license fees paid for the use of a listing of names and mailing addresses for each delivery of direct mail advertising literature or materials.

This regulation clearly provides that shopping guides are subject to sales tax as taxable periodicals. Shopping guides do not qualify as “newspapers” or “magazines” or any of the other exempt printed matter listed in paragraph (b)(1) above. The advertising flyers also are taxable tangible personal property and do not qualify as any of the exempt printed matter listed in that paragraph. The advertising flyers would be exempt if inserted into a “newspaper.”

There are two possible exemptions which you indicate could apply – the resale exemption and the manufacturing exemption. The resale exemption does not apply as the shopping guides are not purchased from you for resale. The manufacturing exemption of which the publishing and printing exemption are subsets also does not apply for the reasons discussed below.

Property directly used in the manufacturing of tangible personal property is excluded from tax. 72 P.S. §§ 7201(k)(8)(A) and (o)(4)(B) (i). Section 201(c) of the TRC, 72 P.S. § 7201(c) defines “manufacture,” in part, as follows:



The performance of manufacturing, fabricating, compounding, processing or other operations, engaged in as a business, which place any tangible personal property in a form, composition or

character different from that in which it is acquired whether for sale or use by the manufacturer, and shall include, but not be limited to--

(1) Every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities (including packaging, if any, passing to the ultimate consumer) which it has when transferred by the manufacturer to another. . .

(2) The publishing of books, newspapers, magazines and other periodicals and printing.

This statutory definition provides that “publishing” and “printing” is a subset of manufacturing. Therefore, whether the Taxpayer is considered a manufacturer, publisher or printer, the same basic rules apply.

As a printer, Taxpayer is eligible for the printing exemption from sales and use tax. The “Printing and Related Businesses” Regulation found at 61 Pa. Code § 32.36, governs the scope of the printing exemption. Concerning the paper and ink purchased by Taxpayer that becomes part of the shopping guides paragraph (a)(3) of that regulation provides as follows:

Materials incorporated as components into printed matter. The purchase of personal property which will be physically incorporated by the printer as an ingredient or constituent of printed matter and which will be sold in the regular course of business is a purchase for resale. These materials may be purchased by the printer free of tax upon presentation to the vendor of a properly executed exemption certificate certifying that the purchase is for resale.

As this paragraph clearly provides, the paper and ink purchased by Taxpayer which are incorporated into its own shopping guide are subject to tax as those shopping guides are not sold by Taxpayer. The paper and ink which are incorporated into shopping guides sold to other shopping guide publishers and incorporated into the advertising flyers sold to grocery stores may be purchased by Taxpayer tax free under the resale exemption.

The sales by Taxpayer of shopping guides to other shopping guide publishers who do not resell the shopping guides is subject to sales tax as there is no valid exemption that applies to this sale or use by the other publisher. Also the sales of advertising flyers to grocery stores for insert into shopping guides are subject to sales tax as no valid exemption applies to the sale or use of these advertising flyers.

The conclusions do not change if the Taxpayer claims the manufacturing or publishing exemption. As Section 201(c) of the TRC, 72 P.S. § 7201(c), provides that publishing is a subset of manufacturing, the scope of the manufacturing exemption governs the scope of the publishing exemption. The “Manufacturing; Processing” Regulation at 61 Pa. Code § 32.32, in part, provides as follows:

(b) Materials incorporated as components into manufactured or processed products. The sale of personal property which will be physically incorporated by the manufacturer or processor as an ingredient or constituent of products which will be sold in the regular course of his business, is a sale for resale. These materials may be purchased by the manufacturer or processor free of tax upon his presentation to the vendor of a properly executed Exemption Certificate certifying that the purchase is for resale. When the manufacturer is not licensed with the Bureau he shall be required to explain on the reverse side of the certificate why a sales tax number is not required.



Under this regulatory provision, the Taxpayer owes sales or use tax on the Taxpayer's purchase of paper and ink used to print its own shopping guide. The Taxpayer's purchase of paper and ink used to print shopping guides for other publishers and advertising flyers for grocery stores to be inserted in shopping guides may be purchased tax free by the Taxpayer using the resale exemption.

The Taxpayer's sale of shopping guides to other publishers is subject to sales tax as the manufacturing, publishing or printing exemptions or the resale exemption do not apply. The Taxpayer's sale of advertising flyers to grocery stores for insertion into shopping guides would also be taxable for the same reasons.