SALES TAX: Magazine Advertising.

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Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

We are replying to your inquiry as to whether or not magazine advertising is to be construed as being newspaper advertising within the meaning of the Missouri Occupation Tax Law.

A magazine is defined in Webster's New International Dictionary to be:

> "A storehouse of information on any subject; formerly used in titles of books. A pamphlet published periodically containing miscellaneous papers, especially critical and descriptive articles, stories, poems, etc., designed for the entertainment of the general reader."

In the case of Houghton v. Payne 194 U. S. 89, 48 L. Ed. 888, the Supreme Court of the United States defining a periodical, at page 96 of the opinion stated:

> "A periodical is defined by Webster as 'a magazine or other publication which appears at stated or regular intervals,' and by the Century dictionary as 'a publication issued at regular intervals in successive numbers or parts, each of which (properly) contains matter on a variety of topics and no one of which is contemplated as forming a book of itself!"

And further on the same page,

"By far the largest class of periodicals are magazines, which are defined by Webster as 'pamphlets published periodically, containing miscellaneous papers or compositions.' "

After holding a magazine to be a periodical the Court at page 97 of the opinion said:

"A periodical, as ordinarily understood, is a publication appearing at stated intervals, each number of which contains a variety of original articles by different authors, devoted either to general literature or some special branch of learning or to a special class of subjects. Ordinarily each number is incomplete in itself, and indicates a relation with prior or subsequent numbers of the same series. It implies a continuity of literary character, a connection between the different numbers of the series in the nature of the articles appearing in them, whether they be successive chapters of the same story or novel or essays upon subjects pertaining to general literature. If, for instance, one number were devoted to law, another to medicine, another to religion, another to music, another to painting, etc., the publication could not be considered as a periodical, as there is no connection between the subjects and no literary continuity. It could scarcely be supposed that ordinary readers would subscribe to a publication devoted to such an extensive range of subjects."

Webster defines a newspaper to be:

"A paper printed and distributed, at stated intervals, usually daily or weekly, to convey news, advocate opinions, etc., now usually containing also advertisements and other matters of public interest."

In our opinion the advertising contained in a periodical or magazine, as above defined, and where the magazine carries no element of what is generally known as news on any subject would not be newspaper advertising within the meaning of the Missouri Occupation Tax Law.

It will, of course, be necessary for you to apply the facts in each particular case to the foregoing definition of a magazine or periodical in order for you to determine whether return should be made of the receipts from such advertising.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC