

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
West Publishing Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 12/1/76-11/30/79. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 5th day of December, 1984, he served the within notice of Decision by certified mail upon West Publishing Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

West Publishing Co.
50 W. Kellogg Blvd., P.O. Box 3526
St. Paul, MN 55165

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
5th day of December, 1984.

David Parchuck

James A. H. H. H.
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
West Publishing Co.

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision
of a Determination or Refund of Sales & Use Tax
under Article 28 & 29 of the Tax Law for the
Period 12/1/76-11/30/79.

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 5th day of December, 1984, he served the within notice of Decision by certified mail upon E. Parker Brown, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

E. Parker Brown
Hancock, Estabrook, Ryan, Shove & Hust
One Mony Plaza
Syracuse, NY 132022791

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
5th day of December, 1984.

David Parchuck

James A. Haydel

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

December 5, 1984

West Publishing Co.
50 W. Kellogg Blvd., P.O. Box 3526
St. Paul, MN 55165

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
E. Parker Brown
Hancock, Estabrook, Ryan, Shove & Hust
One Mony Plaza
Syracuse, NY 132022791
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
WEST PUBLISHING COMPANY	:	DECISION
	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period December 1, 1976	:	
through November 30, 1979.	:	

Petitioner, West Publishing Company, 50 West Kellogg Boulevard, P.O. Box 3526, St. Paul, Minnesota 55165, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1976 through November 30, 1979 (File No. 32863).

Petitioner, by its duly authorized representatives, Hancock & Estabrook, Esqs. (E. Parker Brown, II and Joseph H. Murphy, Esqs., of counsel), waived a formal hearing and submitted its case for decision based on the entire file, including a Stipulation of Facts dated October 25, 1983, and upon briefs to be submitted by February 21, 1984. After due consideration of the file, the Commission renders the following decision.

ISSUE

Whether certain of petitioner's soft cover publications constitute periodicals, receipts from the sale of which are exempt from sales and use taxation under section 1115(a)(5) of the Tax Law.

FINDINGS OF FACT

1. On October 20, 1980, following a field audit, the Audit Division issued to petitioner, West Publishing Company ("West"), a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period December 1,

1976 through November 30, 1979, assessing additional tax due in the amount of \$39,794.14, plus interest.

2. On January 16, 1981, West filed a petition contesting the above-noted assessment. Thereafter, petitioner and the Audit Division agreed that the matter should be submitted for decision based on the entire file without need for oral arguments. The parties submitted a stipulation of relevant facts, dated October 25, 1983, together with attached documentation in support thereof, providing as follows:

"(1) West Publishing Company, headquartered in St. Paul, Minnesota, is a major national publisher of legal materials, as well as educational materials used in colleges and universities.

(2) In 1980 the Audit Division of the New York State Department of Taxation and Finance conducted a sales and compensating use tax audit of West Publishing Company for the period December 1, 1976 through November 30, 1979 (hereinafter "the audit period").

(3) It was established as part of this audit that West Publishing Company had incorrectly accrued use tax on advertising purchases totaling \$246,066.00 and that, accordingly, West is due a refund of \$18,624.45. Because West made formal application for a refund prior to completion of the audit, this refund was excluded from consideration by the examiners and was not offset against additional tax found due in other areas of the audit.

(4) It was also established as part of this audit that additional use tax of \$11,040.00 was due on sales aids, sample giveaways, and reference materials shipped by West Publishing Company into New York State for use by West employees primarily at West's Mineola, New York, sales office.

West Publishing Company stated its agreement with this adjustment and is not contesting this issue herein.

(5) The only area of disagreement in the audit concerned the taxability of certain publications which the examiners characterized as being of two basic types:

- '1) Reporters (regional review of
court cases and decisions)
- 2) Federal Case News (Update of
Federal Court cases)'

West Publishing Company maintained that the publications in question (to be described more fully below) were periodicals subject to the sales tax exemption at Tax Law section 1115(a)(5). The examiners held, however, that the publications were not periodicals, but rather constituted either tangible personal property taxable under Tax Law section 1105(a) or information services taxable under section 1105(c)(1).

(6) The examiners attributed \$330,173.50 in sales during the audit period to the 'Reporter' category and \$50,827.50 in sales to the Federal Case News category. Tax was then calculated at an average rate of 7.547%, resulting in asserted additional tax due of \$24,918.20 in the former category and \$3,835.94 in the latter, for a total of \$28,754.14. West Publishing Company agreed that these amounts were computed correctly, but continued to dispute the taxability of the publications.

(7) On October 20, 1980 Notice of Determination and Demand for Payment of Sales and Use Taxes Due No. S801020184C was issued to West Publishing Company in the principal amount of \$39,794.14, together with statutory interest of \$6,588.79, for a total amount shown due of \$46,382.93.

The \$39,794.14 in principal consists of the aforementioned \$11,040.00 in use tax, which is uncontested, plus the \$28,754.14 attributed to publication sales.

(8) West Publishing Company petitioned for review of the Tax Department's Determination, stating its reliance on Tax Law section 1115(a)(5). On May 26, 1982 a prehearing conference was held. Because the issue herein was not resolved at this conference, the Tax Appeals Bureau accepted West's petition as perfected and forwarded the case for formal hearing. On October 21, 1982, the Department of Taxation and Finance served its Answer upon West, denying the allegations in the Petition and affirmatively stating, inter alia, that the publications in question are taxable both as information services under Tax Law section 1105(c)(3) and as tangible personal property under Tax Law section 1105(a).

(9) The principal publication in the examiners' 'Reporter' category was 'New York Supplement'. Other publications in the category included 'Federal Reporter', 'Federal Supplement', 'Supreme Court Reporter', and 'Northeastern Reporter'.

(10) The issue herein involves the taxability of receipts from the sale of the soft cover publications (Reporters and Federal Case News) to subscribers who did not also purchase the bound volumes.

(11) New York Supplement soft cover publication was issued by West Publishing Company on a weekly basis throughout the audit period. West also published bound hard cover volumes titled 'New York Supplement' on an occasional basis throughout the audit period.

(12) West Publishing Company collected and remitted appropriate tax on receipts from the sale of hard cover bound volumes.

(13) New York Supplement soft cover publications contained the texts of reported decisions of the courts of the State of New York. Prefacing each decision was a synopsis of the case prepared by the editorial staff of West Publishing Company. Also prefacing each decision were headnotes containing rules of law enunciated by the court. The headnotes, like synopses, were prepared by the West editorial staff and coded according to West's key number system. Numbers corresponding to these headnotes were inserted into the texts of the decisions themselves for readers' ease of reference.

(14) The bound volumes of New York Supplement published subsequent to the issuance of New York Supplement soft cover publication contained the texts of decisions, synopses, and headnotes. While a citation to a given page in the soft cover publication may be a proper citation to the same material in a hard cover volume, the printed texts would frequently not be identical. For example, the beginning and ending text on page 32 of 417 NYS 2d as contained in the soft cover publication is different from the text of the same page contained in the hard cover volume. The hard cover bound volumes contained information not present in the soft cover publications such as introductory citations to the Northeastern Reporter and to the official reporters for the lower state courts. Additionally, the hard cover volumes contained page citations to official reporters inserted into the texts of decisions. Finally, typographical and other errors in decisions appearing in the soft cover publication were corrected prior to their publication in the hard cover bound volumes.

(15) New York Supplement soft cover publications contained advertising for other publications of West Publishing Company, for publications of

other companies and for West trade exhibits. This advertising did not appear in the hard cover volumes with the exception that some of the hard cover volumes do contain an advertisement for West Publishing Services on the last page of the volume.

(16) New York Supplement soft cover publications contained a feature titled 'In This Issue', prepared by West's editorial staff, giving highlights of the court decisions reported. This feature did not appear in the hard cover bound volumes.

(17) Under the caption 'Articles of Interest', New York Supplement soft cover publications contained a notice to the public soliciting the submission of previously unpublished articles on subjects of interest to the New York bench and bar. This solicitation did not appear in the hard cover bound volumes.

(18) New York Supplement soft cover publications contained at least monthly a feature titled 'Administrative Highlights', prepared by West's editorial staff, giving summaries of important opinions of the Attorney General, State Comptroller, and Counsel of the State Board of Equalization and Assessment. This feature did not appear in the hard cover bound volumes.

(19) An occasional feature found in New York Supplement soft cover publications was a listing of recently reported federal cases arising in New York. Areas of the law involved in these cases were highlighted by West editors. This feature did not appear in the hard cover bound volumes.

(20) An occasional feature contained in New York Supplement soft cover publications was a 'Synopsis of Recent New York Federal Cases'. This feature, prepared by West editors, consisted of concise summaries of

the facts and holdings in cases decided by the Supreme Court of the United States, United States Courts of Appeals and United States District Courts. It did not appear in the hard cover bound volumes.

(21) New York Supplement soft cover publications contained at least monthly an annotated subject index to recently published legal journal articles. This feature, prepared by the West editorial staff and titled 'Law Review References', did not appear in the hard cover bound volumes.

(22) New York Supplement soft cover publications occasionally contained articles on legal topics written by attorneys who were not employed by West Publishing Company. Contributions by such outside authors were captioned 'Article of Special Interest'. They did not appear in the hard cover bound volumes.

(23) A 'special copyrighted feature' in New York Supplement soft cover publications during sessions of the New York State Legislature was 'The Albany Letter'. This article was prepared by the West editorial staff and contained a summary of legislative highlights, including synopses of new laws and evaluations of their significance, as well as listings of the Governor's vetoes. The Albany Letter did not appear in the hard cover bound volumes.

(24) As New York State court rules were amended or proposed amendments were promulgated, the texts of these changes were printed in New York Supplement soft cover publications. They did not appear in the hard cover bound volumes.

(25) New York Supplement soft cover publications contained calendars of continuing legal education events at least monthly, prepared by West's editorial staff. These did not appear in the hard cover bound volumes.

(26) On a monthly basis New York Supplement soft cover publications contained a copyrighted feature titled 'Judicial Highlights', prepared by West's editorial staff. These articles contained precis of current court decisions in the United States of particular interest, coupled with editors' observations on the significance of the decisions. The Judicial Highlights feature did not appear in the hard cover bound volumes.

(27) New York Supplement soft cover publications contained editorially prepared tables of 'Cumulative Cases Reported' and 'Cumulative Statutes Construed'. The hard cover bound volumes contained tables of 'Cases Reported' and 'Statutes Construed'. The hard cover bound volume tables were compilations integrating all previous data in alphabetical or numerical order.

(28) New York Supplement soft cover publication contained tables of case citations to the American Bar Association's Standards for Criminal Justice, prepared by West's editorial staff. These tables did not appear in the hard cover bound volumes.

(29) New York Supplement soft cover publications contained a listing of 'Cumulative Words and Phrases' selected by the West editorial staff from recent state and federal court decisions. The hard cover bound volumes contained a section titled 'Words and Phrases'. Hard cover bound volume listings were compilations integrating all previous data in alphabetical order.

(30) New York Supplement soft cover publications contained extensive listings of parallel case citations, prepared by West's editorial staff, from N.Y. Supplement 2d to official reports or memorandum decisions. These listings did not appear in the hard cover bound volumes.

(31) New York Supplement soft cover publication contained a 'Key Number Digest', prepared by the West editorial staff, consisting of a key word index with terse statements of the main issues involved in the court cases cited. The hard cover bound volumes also contained a 'Key Number Digest'. The latter constituted a compilation of previous data but was the subject of additional editorial work, such as the insertion of topical subheadings not present in the soft cover publications.

(32) The bound volumes contained the following additional data not present in New York Supplement soft cover publication: (a) tables titled 'N.Y.S. References' or 'New York Supplement References' giving parallel citations from official reporters to N.Y. Supplement 2d; (b) a map of Judicial Departments and Judicial Districts; (c) a title page and Table of Contents; and (d) a roster of judges of New York State courts.

(33) New York Supplement soft cover publications have been classified by the United States Postal Service as publications which are entitled to second class mailing privileges.

(34) New York Supplement soft cover publications were available for circulation to the public, either on a subscription basis or by sale of single numbers.

(35) New York Supplement soft cover publications had continuity as to title and general nature of content from issue to issue.

(36) New York Supplement soft cover publications have been sold by West Publishing Company in New York State since the advent of statewide sales taxation.

(37) Attachments I, J and K [being soft cover publications of West's Federal Reporter (April 11, 1983), Federal Supplement (June 6, 1983) and

Supreme Court Reporter (April 15, 1979), respectively] while not issued by West Publishing during the audit period will be taken as being illustrative respectively of the Federal Reporter, Federal Supplement, Supreme Court Reporter soft cover publications issued by West during the audit period. The publications exhibited in Attachments I, J and K do not contain the features described in paragraphs 17-26, 30 and subpart (a) of paragraph 32 of this stipulation. The Federal Reporter, Federal Supplement and Supreme Court Reporter contain features and attributes identical or very similar to the features and attributes of the New York Supplement described in paragraphs 14, 15, 28, 29, 31, 33, 34, 35 and 36.

(38) Attachment L [being a soft cover publication of West's Northeastern Reporter (July 6, 1983)] while not issued by West Publishing during the audit period will be taken as being illustrative of the Northeastern Reporter soft cover publications issued by West during the audit period. The Northeastern Reporter soft cover publications do not contain features corresponding to the features of the New York Supplement described in paragraphs 17, 18, 20, 21, 22, 23 and 25 of this stipulation. The Northeastern Reporter contains features and attributes identical or very similar to the features and attributes of the New York Supplement described in paragraphs 13, 14, 15, 19, 24, 27, 28, 29, 31, 33, 34, 35 and 36 of this stipulation. The features of the Northeastern Reporter referred to in the preceding sentence appear with the same frequency as the corresponding features of the New York Supplement.

(39) West's Federal Case News was a soft cover, pamphlet-like publication issued by West Publishing Company on a weekly basis.

(40) None of the material which appeared in Federal Case News was published in any other form by West Publishing Company. There was no bound, hard cover volume titled 'Federal Case News'.

(41) Federal Case News consisted of summaries, prepared by the West editorial staff, of current decisions of the Supreme Court of the United States, United States Court of Appeals, United States Court of Claims, United States Court of Customs and Patent Appeals, Temporary Emergency Court of Appeals, United States District Courts, Judicial Panel on Multi-district Litigation, United States Customs Court, and United States Court of Military Appeals, as well as of selected state court decisions.

(42) Federal Case News also included indices and tables of cases, prepared by West's editors.

(43) Federal Case News has been classified by the United States Postal Service as a publication entitled to second class mailing privileges.

(44) Federal Case News was available for circulation to the public.

(45) Federal Case News had continuity as to title and general nature of content from issue to issue."

3. Each of petitioner's soft cover publications labelled "I", "J", "K" and "L" (the Federal Reporter, Federal Supplement, Supreme Court Reporter and Northeastern Reporter) carries on its front cover the statement "A Unit of the National Reporter System".

4. The feature titled "In This Issue" [refer stipulated fact "16"] is referred to on the front of each soft cover issue of the New York Supplement as "'In This Issue', Summary of Cases appearing in this advance sheet." (emphasis supplied).

5. Each of petitioner's soft cover publications "I", "J", "K" and "L" and the soft cover publications of New York Supplement contained the feature "Cumulative Statutes Construed" [refer stipulated fact "27"] under which heading appears the phrase "[f]or earlier constructions, see same Table in prior Advance Sheets and Bound Volumes." (emphasis supplied). The hard cover bound volumes of these publications contained the feature "Statutes Construed", under which heading appears the phrase "[f]or later constructions, see same Table in current Advance Sheets." (emphasis supplied).

6. The hard cover bound volumes of each of the above-noted publications contains a notation with its copyright notice, identifying its volume number and the issue numbers of each of the corresponding volume soft cover publications which are included in the hard cover bound volume [e.g. hard cover bound volume number 418 of New York Supplement (second series) encompasses soft cover publications numbered volume 418 of New York Supplement (second series) Nos. 1 through 5.].

7. The inside of the cover page of the Federal Case News contains the following statement:

"The cases summarized in this issue are those received from the Courts during the week preceding this publication. All cases received are summarized; no selection is made." (emphasis added).

CONCLUSIONS OF LAW

A. That section 1105(a) of Article 28 of the Tax Law imposes a tax upon "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in [Article 28]". Section 1115(a)(5) of the Tax Law exempts from tax the sale of newspapers and periodicals.

B. That the term "periodical" is not defined in the sales tax law.

Furthermore, for a portion of the period at issue herein, specifically prior to January 31, 1979, the Commission had not enacted any regulations defining said term.

C. That in the Matter of Siegfried Lobel d/b/a Government Data Publications, State Tax Comm., October 2, 1981, the Commission concluded, in relevant part, as follows:

"In the absence of a definition of a periodical within the meaning of the sales and use tax exemption statute, resort has to be made to a test of common understanding influenced by authority from collateral sources. (G & B Publishing Co. v. Department of Taxation & Finance, Sales Tax Bureau, 57 A.D.2d 18, 392 N.Y.S.2d 938; Research Institute of America, Inc. v. Department of Taxation & Finance, 99 Misc. 2d 243, 415 N.Y.S.2d 928.) A periodical is a vehicle for the transmission of news, opinions, ideas, information and literature. It has the common elements of periodicity, general availability to the public, and continuity as to title and general nature of content from issue to issue. It does not usually possess (sic) a substantial and permanent binding and the writings contained therein are customarily the product of an editorial staff rather than a single author. (Business Statistics Organization, Inc. v. Joseph, 299 N.Y. 443, 87 N.E.2d 505." (See also Hoke Communications, Inc., State Tax Comm., March 13, 1981.)

D. That regulations of the State Tax Commission, effective January 31, 1979, provide, in relevant part, as follows:

"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.

* * *

Example 11: Advance sheets of court reports are not periodicals.

* * * [20 NYCRR 528.6(c)].

E. That in Matter of Business Statistics Organization v. Joseph, (supra), the Court of Appeals held certain publications (reports and forecasts of conditions affecting commerce, industry and finance) to be exempt from sales and use taxes as periodicals. In so doing, the Court distinguished Matter of Moody's Investors Service v. McGoldrick (280 N.Y. 581), in which certain weekly pamphlets (collecting and compiling statistical information concerning different classes of corporate securities) integrated into a year-end bound reference book or manual were held not to be exempt from tax as periodicals. In distinguishing the two cases the Court, in its decision in Business Statistics, observed the following:

"...the weekly pamphlets in the Moody case (supra) did not come within the category of 'periodicals', not subject to the tax, because they were merely publications at regular intervals of component parts of the reference book or manual issued at the end of the year. In short, the Moody case simply sanctioned the taxability of receipts from the sale of such reference books or manuals.

An entirely different situation is presented in the [Business Statistics] case. The publications here involved [in Business Statistics] can not in any sense be regarded as books or parts thereof." [Matter of Business Statistics v. Joseph, (supra.) at p. 449].

F. That both Moody's and Business Statistics were decided prior to the effective date of 20 NYCRR 528.6(c). As noted in Conclusion of Law "E", one of the distinguishing considerations in determining whether or not a given publication qualifies as a periodical, under the test of common understanding of such term (i.e. prior to the regulation's effective date), is whether the publication is a "book or a part thereof". This consideration was later included in the definition of a periodical as set forth in the Commission's regulation [see 20 NYCRR 528.6(c)(1)(ii) and (3)(iii)]. Accordingly, this factor may be considered both prior to, as well as after, the effective date of the noted regulation.

G. That several of the criteria to be considered in determining whether or not a given publication is a periodical exempt from tax, as reflected in both the general terms of the test of common understanding and (in somewhat more specific terms) under the Commission's regulation, appear uncontested. Specifically, periodicity and frequency of publication, availability to the general public, and continuity as to title and general content from issue to issue, are not contested. Accordingly, the issue turns on whether the instant publications meet the following criteria:

(a) whether the writings contained therein are the product of an editorial staff rather than a single author, or contain a variety of articles by different authors;

(b) whether the publications do not constitute books or parts thereof.

H. That the publications at issue did not, either before or after the enactment of the regulations, qualify as periodicals exempt from tax under Tax Law section 1115(a). Each of the softcover publications labelled "I", "J", "K" and "L" presents the texts of decisions of the various courts together with headnotes listing the major points or issues addressed in the courts' decisions, as well as various tables and/or indexes of cases and statutes. Many of the other "features", such as the articles by outside attorneys, appear only infrequently. Moreover, while the case headnotes and other noted features are prepared by petitioner's large editorial staff rather than by a single author, these items are in fact listings of references, indexes and abstractions of information from the texts of the cases, rather than internally-generated editorial, forecasting, advisory or interpretational narratives as was the case in Business Statistics, supra. and Research Institute of America, supra. (cf. G & B Publishing Co. v. Department of Taxation & Finance, Sales Tax Bureau, 57 A.D.2d 18, mot. for lv. to app. den. 42 N.Y.2d 807). Furthermore, each of the above publications at issue, (except for the Federal Case News), are constituent parts of books. As noted in Finding of Fact "3", the subject publications are referred to as "units of (West's) National Reporter System". Each of these soft cover publications contain, as noted in Finding of Fact "6", issue numbers. The hard bound edition of each numbered volume contains a reference to the issue numbers of the particular soft cover publications of the same general volume number contained in the hard bound edition. But for minor differences as noted, such as the addition of official cites, the pagination and texts are the same. The integration of the material contained in the subject publications (except Federal Case News) into hard bound volumes, also takes these publications out of the category of periodicals. The subject publications are no less

constituent parts of books because the subscribers do not receive the hard bound volumes.¹

Finally, the issues of Federal Case News, although specifically not constituent parts of books, do not qualify as periodicals. Federal Case News presents to its recipients summaries of the decisions of the various courts, as noted, without expressions of editorial opinion or other advisory or interpretational narrative thereon, together with indices, tables of cases, etc. as noted above. Publication of such abstractions of information and compilations of finding aids does not constitute publication of a periodical. In sum, none of the publications at issue are periodicals exempt from sales tax.

I. That inasmuch as the same information presented in petitioner's publications is generally available to the public in other forms and is not uniquely personal in nature, such publications are not exempt as a personal information service under Tax Law section 1105(c)(1). (Matter of Twin Coast Newspapers, Inc. v. State Tax Comm., 101 A.D.2d 977).

J. That the petition of West Publishing Company is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated October 20, 1980, but modified to reflect the refund due as noted in stipulated fact "3", is sustained.

DATED: Albany, New York

DEC 05 1984

STATE TAX COMMISSION

Rodriguez
PRESIDENT
Francis Q. Koenig
COMMISSIONER
W. J. Frank
COMMISSIONER

¹ In fact, the inference to be drawn is that the subscribers retain the subject publications for use as the equivalent of the hard bound volumes.

P 693 166 109

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

Sent to <u>E. Parker Brown</u>	
Street and No. <u>Hancock, Estabrook, Ryan,</u>	
P.O., State and ZIP Code <u>Shore & Hust</u>	
Postage	\$ <u>One Month Plan</u>
Certified Fee	<u>Symple, NY 13022-91</u>
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 693 166 108

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <u>West Publishing Co.</u>	
Street and No. <u>50 W Kellogg Blvd., P Box 3526</u>	
P.O., State and ZIP Code <u>St. Paul, MN 55165</u>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	