

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-12(10)S
Sales Tax
May 14, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120203A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether movies received by Petitioner from film studios and distributors by satellite or other electronic means are subject to State and local sales tax.

We conclude that movies received by satellite are not subject to sales tax. Movies received in a tangible format are subject to tax.

Facts

Petitioner operates movie theaters in New York State. It receives movies from film studios in one of two ways.

The first is by receipt of a hard drive that is loaded into a server. The hard drive contains digital information. This digital information is converted into a viewable movie only after the theater receives an electronic key from the film studio that enables the movie to be shown for a designated period of time. The hard drive is then returned to the studio.

The second method by which Petitioner would receive movies is by satellite transmission from the film studio. In this case, no tangible personal property of any kind will be received by Petitioner.

Analysis

Petitioner's rentals of movies delivered to it by satellite transmission or otherwise delivered electronically are not subject to sales tax. These rentals are considered to be sales of intangible property. *See Google Inc.*, TSB-A-08(22)S (videos delivered electronically); *Martin R. Timm*, TSB-A-05(34)S (photographs delivered electronically); *Universal Music Group*, TSB-A-01(15)S (digitized music); Publication 28 (5/05) *A Guide To Sales Tax for the Film Industry*, at 11.

Petitioner's rentals of movies delivered to it in a tangible format such as on a tape or disk are subject to sales tax as sales of tangible personal property, unless otherwise exempt. *See Apple Computer, Inc.*, TSB-A-07(11)S; *Debra Horn Stachura*, TSB-A-04(26)S; Publication 28, *supra*. When Petitioner rents a movie from a film studio and the studio delivers the movie to

Petitioner on a hard drive, Petitioner is purchasing the movie in a tangible format.¹ The hard drive is tangible personal property regardless of the fact that Petitioner must receive an electronic key to convert the digital information on the hard drive into a viewable movie. Accordingly, Petitioner's rentals of movies delivered to it on a hard drive in New York are subject to State and local sales tax pursuant to Tax Law sections 1105(a) and 1210(a)(1).

DATED: May 14, 2012

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

¹ Tax Law §1101(b)(5).