

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-82(12)S
Sales Tax
March 29, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811117A

On November 17, 1981, a Petition for Advisory Opinion was received from Richard A. Eisner and Company, 380 Madison Avenue, New York, New York 10017.

Petitioner inquires as to the sales tax liabilities which would arise in the course of the production and leasing of films to be broadcast on television.

Petitioner states that a number of its clients are contemplating the production of films to be leased to television networks. Such clients would purchase raw materials to be consumed in production. They would also purchase or rent various props and technical equipment necessary to produce the films, and may engage the services of independent film developers. The completed films would then be leased to various national television networks. The applicable agreements would give the networks the right to broadcast the films over national television twice within a two-year period. Petitioner's clients would retain ownership of the films at all times. It is anticipated that the broadcast of the films will simultaneously reach viewers both within and without New York State.

Petitioner inquires, first, whether the receipts from the leasing of the films would be subject to tax where the film is delivered to the customer either within or without New York.

Section 1105(a) of the Tax Law, contained in Article 28, imposes the State sales tax on the receipts "from every retail sale of tangible personal property." A retail sale is one other than for resale, or for certain uses in the performance of specified services. Tax Law, §1101(b)(4)(i). Section 1101(b)(5) of the Tax Law defines the term "sale" as "Any transfer of title or possession or both, . . . rental, lease or license to use or consume, conditional or otherwise, in any manner, or by any means whatsoever for a consideration or any agreement therefor. . . ." Finally, as stated in the Sales and Use Tax Regulations, "The sales tax is a destination tax, that is, the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate." 20 NYCRR 525.2(a)(3).

Accordingly, the leasing of films by Petitioner's clients will constitute retail sales the receipts from which will be subject to tax in those instances where delivery of the film to the purchaser or its designee takes place within New York. However, where the purchaser has been issued a Direct Pay Permit by the State Tax Commission, and furnishes a copy of the same to the vendor, the vendor

is not required to collect the tax due. Where delivery takes place outside New York no tax will be due.

Petitioner next inquires as to whether, where tax is due but where the film is to be broadcast simultaneously to viewers within and without New York, the purchaser's tax liability is to be computed on the entire price.

The tax imposed under section 1105(a) of the Tax Law is on the "receipts" from retail sales of tangible personal property. The term "receipt" is defined as the "amount of the sale price of any property", by which is meant the entire charge (with certain exclusions not applicable here). Tax Law, §1101(b)(3); 20 NYCRR 526.5. Section 1132 of the Tax Law requires vendors to collect tax on all receipts from the rental of tangible personal property in New York, except where the purchaser provides the vendor with any of certain certificates prescribed by the Tax Commission. In the present instance, then, Petitioner's clients would be required to collect tax on the full charge, irrespective of whether the film is to be broadcast wholly within, or partly within and partly without, New York, unless proffered such a certificate. It would appear from the facts presented by Petitioner that the only applicable such certificate would be the Direct Payment Permit. The foregoing conclusions are equally applicable to all State and local sales and compensating use taxes imposed under or pursuant to the authority of Articles 28 and 29 of the Tax Law.

Finally, Petitioner inquires as to whether its clients would be required to pay tax on the purchase or rental of property and services used in the production of the films. Purchases of tangible personal property which become an actual physical component part of the completed films which are intended to be rented constitute purchases for resale and are accordingly not subject to tax. This would include purchases of such items as raw film stock. The same applies to the purchase of services, such as processing, editing and sound mixing, which are performed on such films. In order to relieve the vendor of its obligation to collect tax in such instances the purchaser must furnish the vendor with a properly completed Form ST-120, Resale Certificate. As to items used in the production of the films but not purchased for resale, the Tax Law contains an exemption with respect to receipts from the sale of machinery and equipment, including parts, tools and supplies "for use or consumption directly and predominantly in the production of tangible personal property . . . for sale, by manufacturing" Tax Law, §§1115(a)(12), 1105-B(a). It is to be noted that this exemption existed in a more limited form prior to March 1, 1981. Further, this exemption is applicable not only to the 4% State sales and compensating use taxes imposed under sections 1105 and 1110 of the Tax Law, but to the additional 1/4% taxes imposed in the Metropolitan Commuter Transportation District by section 1109 of the Tax Law. It is not applicable to the 4% New York City sales and compensating use taxes imposed under section 1107 of the Tax Law. Locally imposed general sales and compensating use taxes and the 4% taxes imposed under section 1108 of the Tax Law (applicable in Yonkers) exempt all sales and uses of "tangible personal property" used or consumed in production in the manner described above with reference to section 1115(a)(12) of the Tax Law. Tax Law, §§1108(b)(1), 1210(a)(1). The exemption provisions here described would apply only to items purchased for direct and predominant use in the production of the films to be leased,

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such as cameras, movieolas, projectors, sound recorders, set lights, booms and similar equipment. In order to avail itself of the production exemption the purchaser in each instance would have to provide the vendor with a properly completed Form ST-121, Exempt Use Certificate.

DATED: March 9, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau