

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

TSB-A-82(26)S  
Sales Tax  
August 16, 1982

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820311B

On March 11, 1982 a Petition for Advisory Opinion was received from Howard Schwartz Recording, Inc., 420 Lexington Avenue, New York, New York 10170.

The issue herein raised is whether the charge by a lessor for recording equipment leased to Petitioner for use in recording studios, where such equipment is rented to its customers, is subject to sales tax.

Petitioner operates a recording studio containing rooms outfitted with recording and sound equipment. Petitioner acquires such equipment by purchase or under long-term leases. The rooms, with the equipment, are rented to customers who pay an hourly rental fee, with no allocation between rental of the room and the equipment. Petitioner collects tax from its customers on the entire rental charge.

Section 1105(a) of the Tax Law imposes a tax on "the receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

Section 1101(b)(4) of the Tax Law defines the term "retail sale," in relevant part, as: "A sale of tangible personal property to any person for any purpose other than (A) for resale as such or as a component part of tangible personal property . . . ."

Section 1101(b)(5) of the Tax Law defines the terms "sale, selling or purchase" as "any transfer of title or possession or both, exchange or barter, 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, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor."

The sound and recording equipment leased by Petitioner is subsequently rented to its customers "for a consideration". Accordingly, the equipment leases between Petitioner and its supplier do not constitute retail sales, but rather sales for re-sale (viz., rental), which are not subject to sales tax. Petitioner must furnish the lessor of the equipment with a properly completed Resale Certificate (Form ST-120), in order to avail itself of such exclusion from tax.

DATED: July 22, 1982

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau