

Allocation of Certain Royalty Receipts by the
Motion Picture Industry

Questions have arisen concerning the applicability of the viewing audience concept to the allocation of television film receipts by the motion picture industry and possible alternatives to that method of allocation, for purposes of computing the business allocation percentage required by Article 9-A of the Tax Law.

Since each movie is judged by critical acclaim and popular opinion, it is very difficult to ascertain a movie's worth, for royalty purposes, until after its release. However, one consideration that must be taken into account is the audience participation figures from the networks and cable television companies that will be showing the film. Other considerations are the number of times a movie is shown and whether it is shown in network, syndicated, or cable television broadcasts. These items must necessarily be considered when licensing fees are charged for television films.

Regulations Section 4-4.3(f)(2) provides that "the broadcasting of radio and television programs and commercial messages by way of radio or television antenna pursuant to a license granted by the Federal Communications Commission is deemed to be a service. When a lump sum is received for such service, that lump sum must be allocated to New York State and another state or states according to the number of listeners or viewers in each state."

While this method of allocation may be equitable for taxpayers engaged in or conducting the business of radio or television broadcasting, it may not be equitable for a taxpayer who actually owns or has been issued the right(s) covering those broadcasts. Therefore, it is necessary to determine a method of allocation for the receipts (royalties) received by members of the motion picture industry for the licensing of television films, including cable television receipts, that can be applied in a uniform manner by members of the motion picture industry.

Thus, where a taxpayer's receipts are from the licensing of television films, including syndication and cable television receipts, the receipts (royalty fees) must be allocated to New York State as follows:

1. Where the producer of a film sells the rights to a film to a network or other taxpayer, the taxpayer, in effect, becomes the producer. Therefore, the taxpayer's receipts are allocated to New York State by the audience participation method as provided in Technical Services Bureau Memorandum TSB-M-79(5)C. The producer who sold the rights to the film must allocate its receipts

to New York State by the same method. Every producer who is a New York taxpayer must allocate its receipts from the sale of film rights, regardless of whether or not the entity to whom it sold the rights is a New York taxpayer.

2. Where the producer of a film sells the rights to a film to a cable television network, the receipts from such sale are allocated to New York State by the ratio that New York State subscribers bears to total subscribers everywhere.

3. Where a network, or other taxpayer is acting as an agent of the producer of the film, its receipts are receipts for services. The network or other taxpayer must allocate such commissions to New York State by the rules of the State Tax Commission as provided in Regulations Section 4-4.3(b). The producer must allocate its receipts to New York State based on the audience participation method as provided in TSB-M-79(5)C.

If there are any unique circumstances where the viewing audience concept does not properly reflect the receipts allocable to New York State, the taxpayer may request that the Tax Commission permit them to use some other method of allocation. Until such permission is granted, the taxpayer may not use an alternative method.

An application to change to a different method must be in writing and must be submitted with the return for which the change is requested. The application must contain the following information:

1. An explanation of how the corporation proposes to allocate "royalty" receipts.
2. A schedule showing the computation of the allocated "royalty" receipts using the prescribed method and the corporation's proposed alternative method for the current taxable year.
3. A copy of Schedule G of Form CT-3 (New York State Corporation Franchise Tax Report) for the current year.
4. A revised Schedule G in which the receipts factor was computed using the corporation's alternative method for allocating "royalty" receipts for the current year.
5. A schedule showing the computation of the tax due for the current year using the statutory method.
6. A schedule showing the computation of tax that would be due for the current year using the proposed method.

This request should be sent to:

State Tax Commission
c/o Director - Audit Division
W. A. Harriman State Campus
Building 9
Albany, NY 12227

If the alternative method is approved, it is only tentative permission subject to revision or revocation on audit. A taxpayer making a request for an adjustment to its business allocation percentage must file its report and compute its tax in accordance with the statutory formula. If the taxpayer's proposed method is approved any overpayment that results from such allowance will be credited or refunded to the taxpayer as provided in the Tax Law.