

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

TSB-A-09(57)S
Sales Tax
December 7, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S090817B

On August 17, 2009, the Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its receipts for the rental of photo studio space are subject to sales tax. Petitioner's receipts are for the use of real property; therefore, they are not subject to sales tax.

Facts

Petitioner provides equipment rental and complete digital solutions for both in-house and location photo shoots, as well as gallery space, and nine full service photographic studios. Every studio has a complete window curtain system, white walls, and cement floor. Petitioner has published rates for the use of different studios. It will also rent out equipment such as cameras and lighting at standard rates. Petitioner's sales invoices itemize the fee for a studio rental.

Analysis

The rental of real property such as a photographic studio is not subject to New York State and local sales and use taxes. Therefore, the fees paid for studio time are not subject to New York State and local sales and use taxes if such fees are solely for the rental of real property. See *Debra Horn Stachura*, Adv Op Comm T&F, November 22, 2004, TSB-A-04(26)S; *CAV Corp dba Soundtrack NY*, Adv Op Comm T&F, May 20, 1998, TSB-A-98(33)S; *Salomon & Leitgeb CPA's, LLP*, Adv Op Comm T&F, July 23, 1997, TSB-A-97(44)S; *Sigma Sound Studios*, Adv Op Comm T&F, October 1, 1987, TSB-A-87(25)S; *Petition of Protape, Inc.*, State Tax Commission, October 23, 1981, TSB-H-81(191)S. However, if Petitioner provides both studio space and tangible personal property for a single charge, the entire charge will be subject to sales tax as receipts from the sale of tangible personal property. However, if the nontaxable charges for the studio space are stated separately from all other charges on the bill or invoice and the studio space charges are reasonably related to the true value of the use of the studio, then those charges would not be subject to sales tax. *CAV Corp dba Soundtrack NY, supra*.

DATED: December 7, 2009

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of 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.