

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

TSB-A-10(27)S
Sales Tax
June 29, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100422A

On April 22, 2010, 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 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 a multi-screen movie theater in New Hartford, New York. It receives movies from film studios in one of two ways.

The first is by satellite transmission from the film studio. In this case, no tangible personal property of any kind is received by Petitioner either within or without New York State.

The second is by receipt of a hard drive that is loaded into a server. The hard drive contains digital information only. 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 returned to the studio, sometimes before the end of the designated period.

Analysis

Petitioner's rentals of movies delivered 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.*, Adv Op Comm T&F, May 2, 2008, TSB-A-08(22)S (videos delivered electronically); *Martin R. Timm*, Adv Op Comm T&F, September 27, 2005, TSB-A-05(34)S (photographs delivered electronically); *Universal Music Group*, Adv Op Comm T&F, April 18, 2001, TSB-A-01(15)S (digitized music); Publication 28 (5/05) *A Guide To Sales Tax for the Film Industry*, at 11.

Rentals of movies in a tangible format such as tapes or disks are subject to sales tax as sales of tangible personal property, unless otherwise exempt. *See Apple Computer, Inc.*, Adv Op Comm T&F, April 12, 2007, TSB-A-07(11)S; *Debra Horn Stachura*, Adv Op Comm T&F, November 22, 2004, TSB-A-04(26)S; Publication 28, *supra*. When Petitioner rents a movie from the film studio by receipt of a hard drive, Petitioner is purchasing the movie in a tangible format. 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, rentals of movies to Petitioner by delivery of a hard drive to Petitioner in New York are subject to sales tax under Tax Law §1105(a).

DATED: June 29, 2010

/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.