

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner) regarding the imposition of sales tax on its receipts for teleprompting services and equipment rentals. We conclude that sales tax is not imposed on receipts for teleprompting services because Petitioner does not relinquish direction or control of its equipment. However, we conclude that sales tax is imposed on receipts for equipment rentals where the equipment is delivered within New York State.

Facts

Petitioner is a full-service teleprompter company that provides teleprompting services for corporate and entertainment events including public speeches, live entertainment events, and video/film productions. A teleprompting service package includes a complete teleprompter system, which varies based on the event, and an experienced professional technician to operate the system. The provided technician is in control of the equipment at all times and is not under the direction of the customer.

In certain circumstances, Petitioner's customers are sufficiently experienced to operate the teleprompting equipment independently. In those circumstances, Petitioner will rent a complete teleprompter system without the experienced professional technician.

Analysis

Tax Law § 1105(a) imposes tax on the receipts from every retail sale of tangible personal property. Pursuant to Tax Law § 1101(b)(5), a sale is “[a]ny 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” Under sales tax regulation § 526.7(e)(4), the transfer of possession with respect to a rental, lease or license to use tangible personal property means that one of the following attributes of property ownership has been transferred:

- (i) custody or possession of the tangible personal property, actual or constructive;
- (ii) the right to custody or possession of the tangible personal property;
- (iii) the right to use, or control or direct the use of, tangible personal property.

When a lease of equipment includes the services of an operator, possession is deemed to be transferred where the lessee has the right to direct and control the use of the equipment. *See* 20 NYCRR 526.7(e)(6).

Here, Petitioner's teleprompter service packages include a professional technician that maintains control of the equipment and is not under the direction of the customer. Accordingly, there is no transfer of title or possession. The receipts for the teleprompter service packages are not subject to sales tax as sales of tangible personal property. Rather, Petitioner is selling a teleprompting service, which is not an enumerated service subject to sales tax. *See* Tax Law § 1105(c).

However, Petitioner also rents equipment without providing any professional technician. In such a circumstance, possession of the equipment is transferred to the customer. Sales tax is imposed on these receipts as sales of tangible personal property and Petitioner must collect sales tax on these receipts where equipment is delivered within New York State. 20 NYCRR 526.7(e)(1).

Additionally, Petitioner may not claim the resale exclusion from sales tax on its equipment purchases. To qualify for the resale exclusion, equipment must be purchased exclusively for the purpose of resale. *See P-H Fine Arts Ltd. v. New York State Tax Appeals Tribunal*, 227 AD2d 683 (3d Dep't 1996), *lv den* 89 NY2d 804. As relevant here, Petitioner purchases equipment to render a teleprompting service and not solely for the purpose of renting equipment to customers. Accordingly, the equipment is not purchased exclusively for the purpose of resale and the resale exclusion does not apply.

DATED: July 14, 2020

/S/
DEBORAH R. LIEBMAN
Deputy 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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.