

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) asking if sales tax is imposed on its sales receipts for video, lighting, and sound effect services performed in New York. We conclude that sales tax is not imposed on these receipts. However, compensating use tax is imposed on Petitioner's in-State use of equipment purchased elsewhere while conducting business in New York State.

**Facts**

Petitioner is incorporated in Delaware and commercially domiciled in California. Petitioner does not have an office in New York State. Petitioner is engaged in the business of providing professional consultation services to advise its customers in incorporating optimal video, sound, and lighting into large commercial and private exhibitions, shows, presentations, and general entertainment events. In conjunction, Petitioner utilizes its audio/visual and lighting equipment ("equipment") to provide audio and visual effects during such an event.

Petitioner begins by advising its customers on the possibilities of video, sound, and lighting for each unique event. Petitioner then determines its customer's production objectives and provides guidance to reach those objectives considering each specific venue and budget. After event details are finalized, Petitioner is responsible for the placement and operation of equipment necessary for the event. Petitioner assembles the necessary equipment onsite prior to each event. Petitioner then operates the equipment itself during each event. Petitioner never transfers control of the equipment to a customer. Likewise, Petitioner never transfers any other tangible personal property to its customers, e.g., event recordings.

**Analysis**

Petitioner provides professional consultation services to advise its customers on the capabilities of video, sound, and lighting equipment and on its potential within an event. Such consultation services are not one of the enumerated services on which sales tax is imposed pursuant to Tax Law § 1105(c). With respect to Petitioner's provision of audio and visual equipment during an event production, sales tax is not imposed on Petitioner's receipts as sales of tangible personal property under Tax Law § 1105(a) because Petitioner does not transfer possession or control of its equipment to its customers. 20 NYCRR 526.7. Rather, Petitioner uses its own equipment to provide video, sound, and lighting services. Those services also are not enumerated as taxed services pursuant to Tax Law § 1105(c). Accordingly, sales tax is not imposed on Petitioner's sales receipts.

It must be noted, however, that compensating use tax is imposed on Petitioner's in-State use of equipment purchased elsewhere. *See generally* Tax Law § 1110; TB-ST-910. The compensating use tax exemption afforded to non-residents did not apply to Petitioner after it became engaged in business in New York State with respect to property used in such business. *See* Tax Law § 1118(2). Compensating use tax generally is calculated based on the purchase price of equipment. *See* Tax Law § 1111(b). However, if it is affirmatively shown that a piece of equipment was used elsewhere for more than six months, then compensating use tax would be collected on the market value of that piece of equipment at the time of its first use within New York State, not to exceed its cost. *See* Tax Law § 1111(b)(1). Alternatively, compensating use tax on equipment used in the performance of a contract for a period of less than six months may be based on the fair rental value of such equipment for its period of use within New York State. *See* Tax Law § 1111(b)(2). Petitioner is liable for compensating use tax on each piece of equipment only once and may be entitled to a deduction based on sales or use tax paid to another state and/or locality. *See* Tax Law § 1118(7); TB-ST-765.

DATED: July 21, 2020

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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.