

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-89 (29)S
Sales Tax
August 21, 1989

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S890301A

On March 1, 1989 a Petition for Advisory Opinion was received from Script Systems, Inc., RD #1 Hinman Road, Mohawk, New York 13407.

The issue raised is whether the sales of Petitioner's "Authoring System" will be subject to state and local sales tax.

Petitioner is the manufacturer of a newly developed machine, a compact disc-interactive "Authoring System", which is a computerized electronic device for use in recording live or prerecorded images (video) and sound (audio) and for entering text by means of a computer keyboard to a magnetic tape for subsequent transfer, by use of other unrelated equipment, to a compact disc. The machine is used to produce motion picture films, training films and audio recordings on compact discs.

In those instances where the "Authoring System" is used to record live performances, the "Authoring System" may also be used for editing, sound mixing, encoding text, etc., thereby allowing the purchaser to prepare the "final" tape prior to the transfer of such to the compact disc. The "final" tape becomes the source for the "master" compact disc.

Petitioner states that potential customers may be motion picture studios, private industry, governmental entities, and certain institutions and research companies such as encyclopedias and tax services.

Section 1105(a) of the Tax Law imposes tax on "[t]he receipts from every retail sale of tangible personal property except as otherwise provided...."

Section 1115(a)(12) of the Tax Law exempts from State and local (but not New York City) sales taxes the receipts from sales of "[m]achinery or equipment for use or consumption directly and predominantly in the production of tangible personal property . . . for sale by manufacturing, processing. . . ."

Section 528.13(c)(1) of the Sales and Use Tax Regulations define the term "directly" to mean that "the machinery and equipment must, during the production phase of a process: (i) act upon or effect a change in material to form the product to be sold, or (ii) have an active causal relationship in the production of the product to be sold, or (iii) be used in the handling, storage, or conveyance of materials or the product to be sold, or (iv) be used to place the product to be sold in the package in which it will enter the stream of commerce". Machinery or equipment used in activities collateral to the production process is not deemed to be used directly in production.

Section 528.13(c)(4) of the Sales and Use Tax Regulations provides that "[m]achinery or equipment is used predominantly in production, if over 50 percent of its use is directly in the production phase of a process". Section 528.13(c)(3) of said Regulations provides that "[m]achinery used to produce other machinery or equipment or parts for self use in production is considered to be

used directly in production".

Accordingly, as an "Authoring System" is used to produce "final" tapes of live or prerecorded video and audio performances, with or without added text, for transfer to a compact disc, it is considered to be machinery or equipment used directly in a continuous manufacturing process.

In a transaction where an "Authoring System" is purchased for predominant (more than 50%) use in a manufacturing process resulting in the production of compact discs for sale, Petitioner's sale of such "Authoring System" will be exempt from state and local sales and use tax pursuant to Section 1115(a)(12) of the Tax Law, provided the purchaser furnishes Petitioner a properly completed form ST-121, Exempt Use Certificate. However, it is noted that when delivery occurs within New York City, such sale will be subject to the New York City Tax of 4% until November 30, 1989. Pursuant to Chapter 376 of the Laws of 1989 such sale shall be exempt from the New York City tax effective December 1, 1989.

When an "Authoring System" is purchased for predominant use in a production process which results in the production of compact discs not for sale, the sale of such "Authoring System" will not qualify for the sales tax exemption provided under Section 1115(a)(12) of the Tax Law but will be subject to the sales and use tax imposed under Section 1105(a) of the Tax Law.

It is noted that Petitioner may sell its "Authoring System" to governmental entities and to certain exempt organizations. Section 1116(a) of the Tax Law exempts sales to governmental entities and to certain organizations from being subject to state and local sales tax. When making sales to a governmental entity or to an exempt organization, Petitioner must obtain a governmental purchase order or invoice from the governmental entity or a form ST-119.1, Exempt Organization Certification from the exempt organization as substantiation that such sales were not subject to state or local sales tax.

DATED: August 21, 1989

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.