

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

TSB-A-93 (47)S
Sales Tax
September 1, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S930430A

On April 30, 1993, a Petition for Advisory Opinion was received from Maggio & Maggio CPA's, 285 Middle Country Rd. Smithtown, New York 11787.

The issue raised by Petitioner, Maggio & Maggio CPA's, is whether Petitioner's client is required to pay sales tax on the purchase of recording tapes and equipment rentals used to produce promotional tapes.

Petitioner's client is in the business of promoting artists for the eventuality of producing record albums. After the artists are taped, the client sends the tapes to various record companies to see if the companies are interested in producing an album by the artist.

Section 1105(a) of the Tax Law imposes a tax upon "The receipts from every retail sale of tangible personal property..."

Section 1101(b)(4) of the Tax Law defines a retail sale as, "A sale of tangible personal property to any person for any purpose, other than (A) for resale as such..."

Section 1101(b)(5) of the Tax Law defines Sale, selling or purchase as, "Any transfer of title or possession or both, exchange or barter, rental, lease or license to use..."

Section 1115(a)(12) of the Tax Law exempts, "Machinery and equipment for use or consumption directly and predominantly in the production of tangible personal property for sale..." (Emphasis supplied)

The purchase of recording tapes and equipment rentals used in the production of a tape used for promotional or demonstration purposes, or given to record companies without charge, is a retail sale subject to sales tax when purchased by the artist or promoter since such tapes will not be resold in accordance with the provisions of Sections 1105(a), 1101(b)(4) and 1101(b)(5) of the Tax Law. Such purchases do not qualify for the exemption provided by Section 1115(a)(12) of the Tax Law because the tape produced is not held for sale. Accordingly the purchase of tapes and the rental of equipment by Petitioner's client are subject to the imposition of sales tax.

DATED: September 1, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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