

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

TSB-A-94 (50)S
Sales Tax
November 23, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940708A

On July 8, 1994 a Petition for Advisory Opinion was received from Falls Earth Station, Inc., Route 20, PO Box 236, Madison, New York 13402.

The issue raised by Petitioner, Falls Earth Station, is whether its television services delivered via an 18" satellite receiving antenna are subject to sales tax.

The following is a list of charges by Petitioner to its customers associated with providing subscriptions to various television programming. Item "A" to "L" represent programming items and items "M" to "X" represent other services.

<u>Basic</u>	A	=	Personal Choice
	B	=	Economy Basic with Networks
	C	=	Economy Basic without Networks
	D	=	Networks (as a package)
	E	=	PPV Access plus Blumberg Direct
<u>Premium</u>	F	=	The Disney Channel
	G	=	Playboy Channel
<u>Ala Carte Basic</u>	H	=	ABC
	I	=	NBC
	J	=	CBS
	K	=	FOX
<u>Pay Per View</u>	L	=	Pay Per View (movies and events)
<u>Other Fees</u>	M	=	Administrative (Late) Fee
	N	=	Access Card Replacement Fee
	O	=	OPPV (Order-ahead Pay Per View) Charge
	P	=	Returned Check Charge
	Q	=	Service Reactivation Charge - Collection
	R	=	Change of Service Charge
	S	=	Duplicate Billing Statement Charge
	T	=	Authorize Additional DSS Receiver Fee
	U	=	Overnight Delivered Charge
	V	=	Service Reactivation Charge - Seasonal
	W	=	Service Activation - New Account

Section 527.2(d)(3)(i) of the Sales and Use Tax Regulations excludes cable television service from the imposition of sales tax. The section provides that:

(3) The term telephony and telegraphy, as used in this Subchapter, does not include:

(i) cable television service, which is the service of receiving and amplifying programs broadcast by television or radio stations or any other programs originated by a cable television company or by any other party, and by distributing such programs

by wire, cable microwave or other similar means, whether such means are owned or leased, to persons who subscribe to such service. See New York State Cable Television Association v. State Tax Commission, 59 A.D.2d 81.

TSB-M-80(6)S, TAXABILITY OF PURCHASES AND SALES BY CABLE TELEVISION AND OTHER TRANSMISSION SERVICE COMPANIES, provides in part:

Charges for the following services -

1. Cable television
2. Master antenna
3. Community antenna
4. Music service (Muzak, etc.)

offered by cable television and other transmission service companies are not subject to New York State and local tax.

Also deposits on tangible personal property rented, leased or loaned are not deemed to be taxable receipts, but are collateral security for return of the property. However, upon the return of the rented, leased or borrowed property, any amounts not refunded to the customer constitute taxable receipts.

The following charges by cable television and other transmission services companies are subject to New York State and local tax.

1. Installation charge for initial hook-up to cable television and other transmission systems.
2. Charges for repairing and replacing damaged cable.
3. Sales and rentals of films.

TSB-M-94(2)S, EQUIPMENT FURNISHED IN CONJUNCTION WITH CABLE TELEVISION SERVICE, provides in part:

The Federal Cable Act of 1992 requires cable television transmission service providers to establish rates for all the tangible personal property supplied with their services. They must separately state charges for these items on their customers' bills. These components include, but are not limited to:

1. remote control units (hand held devices);
2. converter boxes (for basic service and other cable programming services, e.g., pay per channel or pay per view programming); and

3. equipment used for making connections for additional television receivers.

Charges for tangible personal property required to be separately stated represent elements of the total charge for the cable television transmission and are incidental to the primary service being provided. Therefore, the total recurring charge to subscribers for cable television transmission service, including separately stated charges for converter boxes, control units or additional connections, continue to be exempt from New York State and local sales and use taxes.

* * *

Charges to a customer for installation of cable service remain subject to tax.

Petitioner's television services delivered via an 18" satellite receiving antenna constitutes a cable television service in accordance with the meaning and intent of Section 527.2(d)(3)(i) of the Sales and Use Tax Regulations.

Therefore, in accordance with Section 527.2(d)(3)(i) of the Sales and Use Tax Regulations and TSB-M-80(6)S and TSB-M-94(2)S, charges by Petitioner to its subscribers for service items "A" through "V" above are not subject to the imposition of sales tax.

However, item "W", to the extent it constitutes a charge for the installation of cable television service, is subject to sales tax.

DATED: November 23, 1994

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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