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

TSB-M-80 (18)S
Sales Tax
December 20, 1980

Sales Tax Application To Airtape Transmissions

Reproduced below is a recent letter from Deputy Commissioner and Counsel Ralph J. Vecchio pertaining to the above subject. Names and dates have been deleted and substitution of alphabetic symbols, as shown below, have been made to replace names only.

"A" - Name of company which created airtape
"B" - Name of staff member of above company
"C" - Name of Counsel Vecchio's staff member

"In response to your request for a ruling, on I rendered my opinion that the creation by "A" of a composite airtape in New York, under the facts given in that letter, was not subject to the New York State Sales and Compensating Use Tax. On I received your letter requesting a supplemental ruling that the transmission of the composite airtapes to "A's" broadcast affiliates within and without New York State is not subject to the sales and use tax. Your request was supported by a letter of from "B" of "A" in which he summarized some of the provisions of the contractual relationship between "A" and its broadcast affiliates.

Based upon your letters and telephone conversations with "C" of my staff, I understand the facts of airtape transmissions to be as follows: "A" transmits the airtape to its affiliates within and without New York State by means of telephone cables rented from telephone companies. "A" does not employ any of its own telephone cables or any other transmission wire or device. In addition to furnishing the television signals "A" pays the affiliates a percentage of the fees it receives from national sponsors whose commercials are contained in the airtape. In return for the program and the payments, the affiliates, which are independent stations licensed by the Federal Communications Commission, accept and broadcast the signals from the "A" airtape. "A" does not own, operate or in any way control the affiliates and, were it not for the affiliate's FCC license, would have no access to the particular local audiences. The affiliates do not furnish any consideration in cash to "A". Their participation is limited to making available their broadcast facilities and, by extension, the use of their FCC license. For the reasons stated below, it is my opinion that "A" is not required to collect sales tax from the broadcast affiliates on the furnishing of the electronic signals from the composite airtape.

Under section 1105 of the Tax Law, the sales tax is imposed on the receipts from every retail sale of tangible personal property; on the receipts from sales of telephony and telegraphy and telephone and telegraph service of whatever nature except sales for resale and except interstate and international telephony and telegraphy and telephone and telegraph services; and on the receipts except for resale from sales of certain taxable services. (Tax Law, §1105(a), (b) and (c))

No tax is imposed on the transaction described herein under Tax Law, section 1105(a) because the television signals transmitted through the telephone wire are not tangible personal property, as that term is defined in Tax Law, section 1101(b)(6).

Nor is the signal transfer taxable under Tax Law, section 1105(b) as receipts from the sale of telephony and telegraphy or telegraph and telephone service. It is to be inferred from several New York tax cases that the meaning of the term "telegraphy and telephony" is to be confined to its common acceptation, Holmes Electric Protective Co. v. McGoldrick, 262 App Div 514; NYS Cable Television Association v. State Tax Commission, 88 Misc 2d 601, affd 59 AD2d 81, and that all electronic forms of communication are not comprehended. In Quotron Systems v. Gallman, 39 NY2d 428, the Court of Appeals distinguished Quotron's transmissions from those made by an ordinary telegraph company. Unlike a telegraph company, which functions as a mere conduit transmitting to third-party recipients messages given it by various originators, Quotron was the originator as well as the transmitter of stock market information. Therefore, the Court held, Quotron was not a telegraphy company for purposes of the franchise tax imposed by section 186-a of the Tax Law. Similarly, it may be said that "A" transmits signals which it originates to recipients (affiliates) who have contracted to receive them, and that "A" is not a mere conduit of television signals sent by various originators to various recipients.

In NYS Cable Television Association v. State Tax Commission, supra, the Appellate Division, Third Department, stated, at page 83:

> "While both telephony and telegraphy on the one hand, and cable television service on the other, involve dissemination by electronic means of communications as the latter term is used in its broadest sense, we do not believe that it is commonly understood that the former includes the latter."

Hence, the transmission by wire of television signals does not amount to the sale of telephone or telegraph services within the meaning of section 1105(b) of the Tax Law.

Further, the transaction described herein does not amount to the sale of a service which is taxable under section 1105(c) of the Tax Law. Neither the service provided by "A" (furnishing electronic television signals) nor the service provided by the affiliates (furnishing licensed broadcast facilities) is a taxable service. cf. Hospital T.V. Systems v. S.T.C., 44 AD2d 271.

Accordingly, "A's" services of furnishing electronic signals and payments in return for the use of licensed broadcast facilities is not a taxable transaction. This opinion does not address the situation where "A" employs its own transmission facilities, or to any other transaction where services or tangible personal property may be provided by "A" to the affiliates, or vice versa, in addition to the mere wire transmission and subsequent broadcast of the television signals."