

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

TSB-A-86(1)S
Sales Tax
December 12, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850131B

On January 31, 1985 a Petition for Advisory Opinion was received from Douglas J. Fideor, DBA/Village Mall Video, 75 West Main Street, Webster, New York 14580.

The issue raised is whether the charge for a one year video club membership is subject to sales tax.

Video club memberships generally enable a person who purchases such a membership to rent movies at a lower rate than a person who does not purchase a membership. While not so stated in the Petition, it is presumed that this type of membership is the subject of Petitioner's inquiry.

Section 1105(a) of the Tax Law imposes a sales tax on the "... receipts from every retail sale of tangible personal property...." The term "sale" is defined, in pertinent part, in section 1101(b)(5) of the Tax Law as "[a]ny transfer of title or possession or both, exchange or barter, rental, lease or license to use... for a consideration..." The Sales and Use Tax Regulations define the term "consideration" to include monetary consideration and states that monetary consideration includes "... fees, rentals... or any other charge that a purchaser, lessee or licensee is required to pay."

Notwithstanding the fact that Petitioner characterizes the charge as being for a "membership", the substance of the charge is that of a prepayment for the rental of a movie. The membership charge, regardless of the period covered, is therefore part of the receipt subject to tax within the meaning and intent of Tax Law 1101(b)(5) and 1105(a) as well as 20 NYCRR 526.7(b). See Norman Eiger, State Tax Commission Modified Advisory Opinion, December 3, 1985.

DATED: December 12, 1985

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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