

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

TSB-A-86(52)S
Sales Tax
December 10, 1986

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840518A

On May 18, 1984 a Petition for Advisory Opinion was received from Inflight Services, Inc. 485 Madison Avenue, New York, New York 10022.

The issue raised is whether Petitioner is liable for the payment or collection of New York State sales tax with respect to movie film prints rented to domestic and foreign airlines.

Petitioner contracts with commercial airlines to furnish, for a fixed monthly charge, special light-weight film projectors, screen assemblies and ear sets, and to provide engineers to supervise the installation of this equipment into aircraft by the manufacturer. Petitioner retains title to the projection system and the airline agrees to return such equipment to petitioner upon termination of the contract.

The rental agreement ("Agreement") between Petitioner and an airline further requires Petitioner to supply a certain number of full feature movie films per year for each projection system. Petitioner places bookings for the film prints with motion picture distributors in California and engages a common carrier to transport the prints to its New York offices. Petitioner has the films mounted on reels and arranges screenings of each film for airline representatives to be held in New York City. After acceptance of a film by the airline, some reels may be placed on projectors in aircraft located in New York airports, but most of the prints of the new film issue are shipped by COMAT (company materials airline transportation) at no charge to Petitioner to various airports outside New York State for delivery to aircraft at such locations.

Petitioner's employees are available at all major airports within the United States to perform systems maintenance and the services of exchanging and rewinding films. The Agreement states that where such services are to be performed outside of the United States and Canada, Petitioner may train personnel of the airline to perform the services of preparing projectors and movie reels for use on the next flight.

The terms of the Agreement commit Petitioner to supply 36 motion picture films in each 12 month period and the airline to pay a set film rental fee and a fixed service charge for each completed motion picture showing. Petitioner is required to render billings of such charges to the airline by the calendar month.

Copies of booking orders supplied by Petitioner state: "We hereby warrant that said film will not be exhibited in or over New York State". Conversely, the Agreement specifies that the airline, "in its sole discretion," will determine when the exhibit of a film is consistent with its schedules.

Petitioner contends that its rentals and re-rentals of movie films are not taxable transactions because possession is taken and conveyed outside of New York State and, moreover, no use occurs within the State.

Section 1105(a) of the Tax Law imposes a sales tax on the receipts from every retail sale (which includes rental) of tangible personal property, "except as otherwise provided in this article."

Section 1115(a) of the Tax Law (as added by L. 1978, Ch. 773, effective March 1, 1979) provides an exemption from New York State sales and use tax for:

(21) "Commercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property used by or purchased for the use of such aircraft for maintenance and repairs and flight simulators purchased by commercial airlines."

The film projection systems furnished by Petitioner for installation on aircraft are exempt machinery and equipment within the meaning and intent of the above quoted section of the Tax Law. The exemption, however, does not extend to the motion picture films supplied by Petitioner, because they are neither machinery or equipment, nor property used for the maintenance and repair of aircraft.

Accordingly, rentals of film prints by Petitioner to an airline are subject to the sales tax, which is deemed to be a "destination tax", in the sense that "the point of delivery or point at which possession is transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate". (20 NYCRR 525.2(a)(3)). The fact that the film is not shown in or over New York State has no bearing on the tax consequence. The Courts have held that:

[a] sale of goods in which delivery is taken by the purchaser within the seller's state is a local transaction which is taxable; ... and it is immaterial "that the goods are to be transported out of [the taxing state] immediately on delivery", for the "consumption of the transaction was an event within [the taxing state] which gave it authority to levy tax on ... the sales," (citation omitted). F & M Schaefer Brewing Co. v. Gerosa, 4 NY 2d 423, 427; affd 3 AD2d 898; appeal dismissed, 358 U.S. 282).

Consequently, a taxable transaction occurs whenever a film is installed by Petitioner on aircraft located in New York State, or is delivered, within the State, to an airline for installation on aircraft by its own personnel. If a film is merely delivered in New York to an airline acting as a common carrier for shipment to Petitioner's employees at an out-of-State location, no taxable transfer of property has taken place and Petitioner need not collect sales tax thereon, provided proper documentation is maintained to support such transactions.

Petitioner bills the airline for movie rentals on a month-to-month basis. Therefore, the rental of a film with possession transferred in New York subjects the rental amounts charged for that film in the month in which transfer occurred to the applicable New York State and local sales tax. No

tax will be due on rentals charged on subsequent monthly billings if the film has not been exhibited in or over New York State in that transaction period and, in fact, is exported from New York State for use outside New York State. Cf. Matter of Vincent S. Jerry & Sons Inc., Decision of the State Tax Commission, Feb. 22, 1980, TSB-H-80 (58)S.

Section 1105(c)(3) of the Tax Law (as amended by L. 1978, Ch. 773, effective March 1, 1979) imposes a sales tax on the receipts from every sale of "[i]nstalling tangible personal property ... or maintaining, servicing or repairing tangible personal property, ... except:

(v) such services rendered with respect to commercial aircraft, machinery or equipment and property used by or purchased for the use of such aircraft as such aircraft, machinery or equipment, ... are specified in [1115(a)(21)] of this article....

Petitioner's services of preparing projectors for use, including exchanges of movie reels and rewinding film, qualify for this exemption. Thus, no tax is due on service charges billed to the airline under the terms of the Agreement.

It should be noted that whenever Petitioner renders to its customer an invoice which includes both charges subject to tax and exempt charges, the taxable and nontaxable amounts must be stated separately thereon. If such amounts are not so separately stated, tax must be collected on the entire amount charged. 20 NYCRR 533.2(a)(1);(b)(2).

Finally, insofar as film prints are intended for re-rental, no tax is due on their rental from the distributor if Petitioner furnishes that supplier with a properly completed Resale Certificate (Form ST-120). However, any self use of these films by Petitioner within New York State, such as for previews preceding approval by an airline, is subject to the compensating use tax imposed by Section 1110 of the Tax Law.

DATED: December 10, 1986

s/FRANK J. PUCCIA
Director
Technical Services Bureau

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