

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

TSB-A-95 (41)S
Sales Tax
October 30, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S941205A

On December 5, 1994, a Petition for Advisory Opinion was received from MRG Production Associates, Inc., 2 Floyd Lane, Massapequa, New York 11762.

The issue raised by Petitioner, MRG Production Associates, is whether the monthly fee received by Petitioner for providing videotape playback facilities and support staff for a new cable television channel's (hereinafter "Corporation A") 24 hour on-air operational needs is subject to sales and use taxes.

Petitioner is exploring the possibility of entering into an agreement with Corporation A. Petitioner will provide videotape playback facilities and staff to support Corporation A's 24 hour on-air operational needs for which Petitioner will receive a monthly fee.

The role of Petitioner's Technical Operation's Center (the "playback facility", hereinafter referred to as the "TOC") will be to accept videotaped pre-recorded materials delivered to its portals, for later broadcast, as well as to accept programs in the form of electronic signals fed to Petitioner's TOC from a satellite and thereafter performing the function of playing back these pre-recorded and satellite received programs. In addition, Petitioner's responsibility will be to feed these signals via fiber-optic circuits (leased from NYNEX and paid for directly by Corporation A) to a satellite uplink facility (leased from Home Box Office and paid for directly by Corporation A) for the purpose of distributing Corporation A's programming to the numerous cable television system operators throughout the country who wish to carry the channel.

Section 1105(a) of the Tax Law imposes a sales tax on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided."

Section 1105(b) of the Tax Law imposes a sales tax on "[t]he receipts from every sale, other than sales for resale,...of telephony and telegraph and telephone and telegraph services..."

Section 1105(c) of the Tax Law imposes tax upon the receipts from every sale, except for resale, of certain enumerated services.

In Showtime Entertainment, Adv Op St Tx Comm, December 18, 1981, TSB-A-81(70)S the Tax Commission advised that electronic signals transmitted by the petitioner's playback and uplink facilities were not tangible personal property, and, therefore, transmission of such signals by the petitioner to a satellite for broadcast purposes was not a taxable sale of tangible personal property under Section 1105(a) of the Tax Law. Further, the Tax Commission advised that in transmitting such signals, the petitioner was neither providing a telegraph service nor an information service within the meaning of the Tax Law. Accordingly, the Showtime's transmission of programs,

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partially or totally created by it, over its own playback and uplink facilities were, therefore, not subject to State and local sales and use taxes.

In the instant case, Petitioner will accept videotaped pre-recorded materials for later broadcast, as well as accept programs in the form of electronic signals fed to Petitioner's TOC from a satellite and play back these pre-recorded and satellite received programs. In addition, Petitioner's responsibility will be to feed these signals via fiber-optic circuits to a satellite uplink facility (leased from Home Box Office and paid for directly by Corporation A) for the purpose of distributing Corporation A's programming to cable television system operators throughout the country who will carry the channel.

Accordingly, pursuant to Showtime Entertainment, supra, the accepting by Petitioner of videotaped pre-recorded materials for later broadcast, accepting of programs in the form of electronic signals fed to Petitioner's TOC from a satellite for playback, as well as, Petitioner's responsibility to feed these signals via fiber-optic circuits (leased from NYNEX and paid for directly by Corporation A) to a satellite uplink facility (leased from Home Box Office and paid for directly by Corporation A) for the purpose of distributing Corporation A's programming to cable television system operators throughout the country who will carry the channel will not constitute the sale of tangible personal property. Further, in transmitting such signals, Petitioner will not be providing a telephone and telegraph service within the meaning of Section 1105(b) of the Tax Law or an information service within the meaning of Section 1105(c) the Tax Law. Petitioner will merely feed signals to the transmission facilities leased by its customers. Therefore, the providing by Petitioner of a videotape playback facility and support staff for Corporation A to meet its 24 hour on-air operational needs as set forth above will not constitute the sale of tangible personal property, subject to State and local sales and use taxes under Section 1105(a) of the Tax Law, a telephone and telegraph service subject to sales tax under Section 1105(b) of the Tax Law, or one of the enumerated services subject to sales and use taxes under Section 1105(c) of the Tax Law.

DATED: October 30, 1995

/s/
Doris S. Bauman
Director
Technical Services Bureau

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