

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

TSB-A-98(8)S
Sales Tax

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S960620B

On June 20, 1996, a Petition for Advisory Opinion was received from Michael A. Badeau, CPA, Coopers & Lybrand L.L.P., One Lincoln Center, Syracuse, New York 13202, on behalf of an undisclosed client. Petitioner submitted additional information pertaining to this petition on October 25, 1996.

The issue raised by Petitioner, Michael A. Badeau, CPA, Coopers & Lybrand L.L.P., is whether charges by the Petitioner's client to its customer for broadcasting, studio time (set-up, broadcast, breakdown) and employee time, are subject to state and local sales and compensating use taxes.

Petitioner presents the following facts. Petitioner's client is a public broadcasting station of both television and radio. Petitioner's client is an exempt organization under Internal Revenue Code Section 501(c)(3), and under New York State Tax Law section 1116(a)(4).

A local corporation (hereafter referred to as "customer"), with multiple locations throughout the U.S., requests Petitioner's client to assist in producing and broadcasting a television program designed solely for the benefit and use of the customer's employees. The live TV program is broadcast by wire transmission to satellite uplink equipment, which beams a scrambled signal to a satellite, which in turn, beams the signal to the selected sites.

Periodically, a customer's representative will arrange with Petitioner's client for dates and times to broadcast a television program. The customer's staff will select the topics, the program content (generally the customer's internal business news, technical product news, or similar news), prepare a script, select customer employees to be included on the program, and select the various receiving sites. Petitioner's client's personnel may assist the customer in any, or all, steps of the preproduction planning and execution, for which Petitioner's client is paid a fee (generally based upon time spent by Petitioner's client's employees). Petitioner's client generally provides a program host to work with, interview, or moderate the customer's program, and again charges a fee (time-use based). Rehearsals, if needed, are held in Petitioner's client's facility and a charge to the customer is made.

On the day of the television broadcast, Petitioner's client's employees set up their broadcast facility (studio) taking some general guidance and suggestions from the customer but determining all of the technical and procedural aspects for the program. Petitioner's client broadcasts the live program to the selected sites. Currently, there can be an interactive response from the receiving sites via telephone or fax. After the broadcast, the studio is returned to normal.

Throughout this process, Petitioner's client's employees retain control over all technical aspects of the program. All broadcast equipment is used and controlled by Petitioner's client's employees. During the broadcast, the

customer will have an employee making requests of Petitioner's client's employees. Generally, requests are centered upon which cameras are being used, the camera angles, etc., and the customer requests are generally granted.

Petitioner's client charges fees for the broadcast, studio time (set-up, broadcast, breakdown) and employee time. In addition, if the customer wants a tape of the program, a copy is made from the client prepared master tape, and an additional, separate charge is made for this tape. (We note that Petitioner concedes that its client's sale of duplicate copies of the program tape would be subject to sales tax as the sale of tangible personal property and does not raise this as an issue.)

The contract for this service is by customer purchase order, setting forth the scope of the services requested but it is not specific (i.e., the customer will use the terminology of "all arrangement for performance"). This purchase order is apparently intended to cover all of Petitioner's client's charges to the customer during a period of time (say, one year), and setting a maximum amount that may be spent by the customer within that period. Due to the lack of specific steps, fees, etc., Petitioner's client looks upon the purchase order as a control for the customer (i.e., the budget of customer's department requesting this service). Petitioner's client's billing will show the date of a transaction, a brief description, show number, charge (debit), and will keep a running balance owed by the customer. Each charge is separately stated in Petitioner's client's invoice or statement.

Applicable Law and Regulations

Section 1105 of the Tax Law imposes sales tax upon, among other things:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

(b) The receipts from every sale, other than sales for resale, of gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature, and from every sale, other than sales for resale, of telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service and from every sale, other than sales for resale, of a telephone answering service.

Section 1105(c) of the Tax Law imposes sales tax on receipts from certain listed services.

Opinion

The receipts for Petitioner's client's services in connection with the production and broadcasting of the television program, which are separately stated from the sales of the duplicate copies of the tape and which include

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charges for broadcasting, studio time (set-up, broadcast, breakdown), employee time and transmission to a satellite for broadcast purposes, are not receipts from the sale of tangible personal property under section 1105(a) or from the sale of a telephone or telegraph service under section 1105(b) of the Tax Law.

See Technical Services Bureau Memorandum, Sales Tax Application to Airtape Transmissions, TSB-M-80(18)S. Furthermore, the services are not enumerated services under section 1105(c) of the Tax Law. Therefore, Petitioner's client's receipts from sales of these services are not subject to sales and compensating use taxes.

DATED: February 25, 1998

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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