

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

TSB-H-80 (112) S  
Sales Tax  
July 1, 1980

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

Petition No. S800331A

On March 31, 1980 a Petition for Advisory Opinion was received from Seneca Cable TV, Inc., River Mall, Downer Street, Baldwinsville, New York 13027.

The issue raised is whether State and local sales taxes, which are imposed under Articles 28 and 29 of the Tax Law, are due on Petitioner's purchase of (1) materials intended to be assembled or constructed, either by Petitioner's employees or by sub-contractors, so as to become part or the whole of buildings, head end, trunk distribution system, and test equipment used in a cable TV operation, and (2) tools, equipment, automotive equipment, furniture and fixtures used in a cable TV operation.

Section 1105(a) of the Tax Law, contained in Article 28, imposes a State sales tax on the "...receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Section 1101(b)(4) defines a retail sale as a "... sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3) and (5) of subdivision (c) of section eleven hundred five where the property so sold becomes a physical component part of the property upon which the services are performed or where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax." The services so referred to, by paragraph numbers, are (1) the furnishing of information, (2) producing, fabricating, processing, printing or imprinting tangible personal property for a person who furnishes such property not purchased by him for resale, (3) installing tangible personal property or maintaining, servicing or repairing tangible personal property not held for sale in the regular course of business, and (5) maintaining, servicing or repairing real property, property or land as defined in the Real Property Tax Law. The foregoing provisions are also applicable to sales taxes imposed by cities, counties and school districts under the authority of Article 29 of the Tax Law.

Inasmuch as Petitioner purchases the tangible personal property in question neither for resale nor for use by it in furnishing one of the taxable services described in section 1105(c)(1), (2), (3) or (5) of the Tax Law, it follows that sales tax is due on the receipts from the sales to Petitioner of such property. It is not relevant to this opinion that certain of the property may be assembled or constructed, whether by corporate personnel or subcontractors, so as to become buildings, head end, trunk distribution system, and test equipment. In addition, this opinion is based in part upon a determination that none of the exemption provisions contained in section 1115 or 1116 of the Tax Law are applicable to the Petitioner or to transactions of the type under discussion.

Dated: June 16, 1980

s/ LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau