

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

TSB-A-81(20.1)S  
Sales Tax  
December 3, 1985

STATE OF NEW YORK  
STATE TAX COMMISSION

MODIFIED ADVISORY OPINION    PETITION NO. S810410A

This modifies an Advisory Opinion issued to Norman Eiger, 11 Frankie Lane, Old Bethpage, New York 11804, dated August 25, 1981 (TSB-A-81(20)S) regarding the sales tax status of membership fees paid to Petitioner which entitled the payor to rent movies at a discounted rate.

The purpose of this modification is to correct the original opinion to provide henceforth that such membership fees are subject to sales tax.

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." 20 NYCRR 526.7(b).

Petitioner is in the business of renting movies in the form of video cassettes. Prices of the movie rentals differ for so-called "members" and "non-members" with members paying a lower rental price than non members. Notwithstanding the fact that Petitioner refers to this charge as a membership fee, the charge is, in substance, a prepayment for the rental of movies since no other rights or benefits accrue pursuant to membership.

In the Matter of Credit Bureau of Central New York v. State Tax Commission, 105 AD2d 1042 (1984), the court determined that membership fees paid to a credit reporting agency were merely part of the members' cost of the credit reports since the credit reports were the only things provided to members by the credit bureau in return for the fee. The court concluded that such fees are subject to tax since they are, in reality, prepayments which only entitled members to reduced charges for the credit reports.

Since the membership fee charged by Petitioner entitles members only to a reduced rental charge and since no other rights or benefits accrue pursuant to membership, the membership fee charged by Petitioner is subject to tax in its entirety.

Section 901.4 of Title 20 of the New York Code of Rules and Regulations concerning advisory opinions states in part that: "... The Tax Commission may modify a previously issued advisory opinion, but in such instance the modification shall operate prospectively only." Accordingly, Petitioner is not liable for the collection of sales tax on membership fees charged while the previously issued opinion was in effect. However, immediately upon Petitioner's receipt of this modified opinion, sales tax must be collected and remitted on all such membership fees.

DATED: December 3, 1985

s/ANDREW F. MARCHESE  
Chief of Advisory Opinions

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