

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

TSB-A-99(25)S  
Sales Tax  
April 21, 1999

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980707A

On July 7, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from Cirque du Soleil America, Inc., 8400 2<sup>nd</sup> Avenue, Montreal, Que H1Z 4M6.

The issue raised by Petitioner, Cirque du Soleil America, Inc., is whether the rental charges for tangible personal property used by Petitioner in its live performances in New York City are exempt from New York City sales and use taxes.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner creates international live dramatical circus shows. Petitioner has, from its beginnings, tried to create a new form of art, a new type of theater-circus. Its first shows were entitled Re-inventing the Circus, New Experience, Saltimbanco, Alegria, and Mystere. At the time of this Petition, Petitioner was producing Quidam.

All of Petitioner's shows are created by a highly innovative team. The costume designer brings the characters alive with the designs, colors and materials which are chosen for the costumes. The set designer creates the stage as an environment for the artists to move through to make the Big Top tent and its structure part of the set design and theme. The composer creates the sound that envelops the characters and animates the show. The composer imagines sounds that breathe with the artists' movements. The score creates a cohesion that links a series of diverse acts. While the stage direction sets the tone and the atmosphere for the show, the choreographer melds the energy of the acrobatics into the fluidity and expressiveness of dance. Lighting direction helps to create the ambiance and atmosphere of the show and is linked directly to how the space is used. The lighting is also used to direct the eyes, influence the perceptions and suggest ideas to the audience.

Each show has its theme and the theme of the show is the connection between the scenes of the show. It is designed to create and maintain a magical atmosphere that is uninterrupted by the need to take down and put up new equipment. The props and accessories, the costumes, the artist dancing, singing and moving about the stage tell a continuing story which is based on the theme.

Petitioner has a touring show that performs in Canada and the USA and goes from one city to the next with its show. The show Quidam started out in Canada in 1996, went to California from September 1996 to September 1997, and moved to Colorado and Texas in October 1997 to March 1998. The show was presented in New York City from April 8 to July 5, 1998. After New York City, it was scheduled to go to Chicago, Fairfax (Virginia) and end up in Atlanta at the end of December 1998.

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All the property used in the production is rented from Cirque du Soleil Inc. ("CSI"), a sister company. The property includes scenery, the stage, costumes, lighting and sound equipment, acrobatic equipment and props. All the above property is used 100% in the production of the show.

Also rented from CSI is the tour equipment which includes the Big Top tent, seating and stands, trailers, an artistic tent, electric trailers, generators, etc. These assets are all needed to stage the show.

The performances take place in the Big Top which is installed in Battery Park. The Big Top has a capacity of 2577 seats and tickets can be purchased for 8 to 10 performances per week. Petitioner's show is a unique experience because of the total creative team, and all of the artists who together make and create the event.

All of the performers in Petitioner's shows are people. No animals appear in the shows.

### **Applicable Laws and Regulations**

Section 1107(d)(1) of the Tax Law provides:

(d) Certain exemptions. Notwithstanding any contrary provisions of this section, receipts from every retail sale of, and consideration given or contracted to be given for, or for the use of, the following tangible personal property and services shall be exempt from the taxes imposed by this section:

(1) Tangible personal property for use or consumption directly and predominantly in production of live dramatic or musical arts performances in a theatre or other similar place of assembly (but not including a roof garden, cabaret or other similar place) in such a city of one million or more, with a seating capacity of one hundred or more chairs that are rigidly anchored to the construction or fixed in place so as to prevent movement in any direction, but only where it can be shown at the time such tangible personal property is purchased that such performances are to be presented in such a city to the public on a regular basis of at least five performances per week for a period of at least two consecutive weeks, the content of each such performance shall be the same and a charge is or is to be made for subdivision, the term "place of assembly" shall mean a place of assembly with a stage in which scenery and scenic elements are used, as described in sections 27-232 and subdivision (a) of section 27-255 of the administrative code of the city of New York, and for which an approved seating plan is required to be kept under section 27-528 of such code. Nothing in this paragraph shall be construed to exempt tangible personal property which is permanently affixed to, or becomes an integral component part of, a structure, building, or real property.

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Section 527.10(d)(2) of the Sales and Use Tax Regulations provides:

Charges for admission to dramatic or musical arts performances are excluded from tax. Dramatic and musical arts performances do not include variety shows, magic shows, circuses, animal acts, ice shows, aquatic shows and similar performances.

**Opinion**

In Cirque du Soleil America, Inc., Adv Op Comm T&F, January 30, 1998, TSB-A-98(1)S it was concluded that while Petitioner's performances do contain some elements of the dramatic or musical arts, it was deemed that these elements did not predominate over the other traditional elements that are more characteristic of a circus (i.e., acrobats, gymnasts, trapeze artists, clowns, etc). Therefore, Petitioner's performances were deemed to be that of a live circus for purposes of Section 1105(f)(1) of the Tax Law and on such basis the admission charges for Petitioner's performances were not subject to sales tax.

Under Section 1107(d)(1) of the Tax Law, the purchase of tangible personal property for use or consumption directly and predominantly in production of live dramatic or musical arts performances in a theatre or other similar place of assembly in a city of one million or more is exempt from the four percent tax imposed by Section 1107. While the live circus shows performed by Petitioner do contain some elements of the dramatic or musical arts, these elements do not predominate over the other traditional elements that are more characteristic of a circus (i.e., acrobats, gymnasts, trapeze artists, clowns, etc). See Cirque du Soleil America, Inc., *supra*. Accordingly, since the tangible personal property rented by Petitioner is not for use or consumption directly and predominantly in the production of a live dramatic or musical arts performance, the exemption under Section 1107(d)(1) does not apply to tangible personal property rented by Petitioner for its performances.

DATED: April 21, 1999

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

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