New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

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Corporation Tax
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Allocation Method for Cable Television Corporations under Article 9-A

This is in response to your letter requesting advice concerning the allocation under Tax Law Article 9-A of receipts from cable programming and video-on-demand by your client XYZ Corporation ("XYZ Corp.").

You state in your letter that XYZ Corp. and its subsidiaries (collectively "XYZ") are considering relocating their corporate headquarters from State A to New York City. In consideration of this potential relocation, XYZ is reviewing the state tax consequences of its proposed move and requesting advice "to clarify the manner in which its sales of cable services are apportioned for purposes of New York corporate franchise tax."

According to your letter, XYZ owns and operates cable systems in New York State and provides a variety of services to its New York subscribers. XYZ also owns and operates cable systems outside New York State and provides a variety of services to subscribers located outside the State. XYZ maintains its corporate headquarters in State A.

To provide cable services, XYZ incurs costs both inside and outside New York State, which are generally attributable to the purchase, production, and distribution of video content. If content (e.g., programming) must be purchased from third parties, it is sent from a satellite owned by a third party to a "head end" owned by XYZ which may be located within or without New York State. The programming is delivered to subscribers using a variety of coaxial cable and electronics. If XYZ produces its own content, it is often produced in a central location which may be within or without New York State, and distributed to subscribers terrestrially.

Your letter states that XYZ's operations consist of "three primary service lines": (1) cable services, (2) high speed data services, and (3) voice over Internet protocol telephone services. Cable services account for the majority of XYZ's revenue in New York State and elsewhere. As part of its cable services, XYZ provides self-produced and third party video programming, pay-per-view, video-on-demand, high definition television, interactive television and paid and interactive advertising. XYZ's cable service revenues are primarily attributable to the following sources:

> Cable programming/subscriber fees from subscriber's purchases of a variety of programming packages, including basic, standard and digital, for a flat monthly fee. The basic and standard service includes local broadcasting signals.
>
> Video-on-demand revenue from subscribers' purchases of video content such as movies, games and television shows on a per-view basis.

Advertising revenue from XYZ's sales of advertising to national, regional and local businesses.

You have asked how XYZ should source its receipts from the sale of cable programming and video-on-demand services and related advertising revenue. You have concluded from your own analysis that the receipts should be sourced and allocated based on the location of the viewer or customer.

Analysis

Sections 210.3(a)(2)(A), (B) and (C) do not provide an enumerated method for determining the portions of the receipts from cable programming, video-on-demand or advertising revenue that are allocable to New York. Therefore, XYZ's receipts from these activities constitute "other business receipts" under section 210.3(a)(2)(D). Other business receipts are allocated to New York State if they are earned by a taxpayer in New York.

Neither the Tax Law nor the Business Corporation Franchise Tax Regulations provide specific guidance on where receipts from cable programming or video-on-demand are "earned." However, the Department has issued guidance in a number of instances involving similar activities. In *New York Mercantile Exchange*, Adv Opn Comm T & F, April 7, 1999, TSB-A-99(16)C) it was held that the receipts of a commodity futures exchange from vendors who accessed the exchange's market data through modems and other transmission equipment would be sourced within and without New York on the basis of the location of the modems and transmission equipment used by the vendors to draw upon the data offered by the exchange. Similarly, in *Insurance Services Office, Inc.*, Adv Opn Comm T & F, September 6, 2000, TSB-A-00(15)C it was held that the petitioner's license fees from customers who accessed the petitioner's copyrighted data through the Internet, which were deemed to be "other business receipts" pursuant to Tax Law section 210.3(a)(2)(D), were "earned" in New York when the modems and transmission equipment used by the customer to draw upon the database were located in New York. More recently, in *Deloitte & Touche LLP*, Adv Opn Comm T & F, April 18, 2002, TSB-A-02(3)C, the allocation of receipts of an online marketer and processor of gift certificates, gift cards and related products was discussed. The advisory opinion, which held that the receipts would be characterized as "other business receipts," concluded that the receipts from the sales of the gift certificates and checks should be sourced to New York based on the location of the customer that accesses the online marketer's website.

In view of the foregoing, we conclude that it is appropriate to base the allocation of the receipts from cable programming and video-on-demand on the location of the subscriber. In this regard, XYZ should include in the numerator of its receipts factor the amount of cable programming and video-on-demand receipts paid by New York subscribers,[1] and should include in the denominator the cable programming and video-on-demand receipts paid by all subscribers.

Advertising revenue from XYZ's sales of advertising to national, regional and local businesses is the remaining revenue source to discuss. The advertising conducted by XYZ is similar to the publishing of advertising in newspapers and periodicals. Pursuant to Corporation Franchise Tax Regulation section 4-4.3(f)(3) (20 NYCRR 4-4.3(f)(3]) receipts from newspaper and periodical advertising are allocated based on the ratio of the New York circulation of the newspaper or periodical containing the advertising to the total circulation of such newspaper or periodical. This method for allocating receipts from newspaper and periodical advertising would be a reasonable method for XYZ to allocate its receipts from the sale of advertising. Therefore, XYZ should base the allocation of advertising revenue on the ratio of its New York subscribers to the number of cable programming subscribers everywhere.

This advice is limited to the issue of the proper allocation of XYZ's receipts from cable services. You have not requested advice regarding the allocation of XYZ's receipts from voice over internet protocol telephone services or high speed data services. Thus, this letter does not address and should not be construed to provide guidance on those issues.

NOTE: NYT-Gs are informational statements of the Department's interpretation of the Tax Law and regulations and are based on a particular set of facts. NYT-Gs are accurate on the date they are published and are limited to the facts set forth therein. A NYT-G is based on the statutes, regulations, court cases, and Tax Appeals Tribunal decisions in effect on the date the NYT-G is issued (or in effect for the specific time period at issue in the NYT-G). Any changes in such legal authorities after the date the NYT-G is published may affect the conclusions stated therein.

[1] The determination whether or not a subscriber is a New York subscriber for purposes of this allocation method should be based on the location where the cable programming is delivered. In instances where information is not available to determine the delivery location, such location may be presumed to be at the subscriber's mailing address in the records of XYZ.