

# New York Sales and Use Tax Relating to Commercial Production and Editing AICE

October 6, 2016

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## General Rule of Sales Tax

### Tangible Personal Property, Intangible Property & Services

#### Tangible

All sales of tangible personal property (including films) delivered in New York are subject to tax unless specifically exempted under the law.

#### Intangible

Generally, sales of intangible property delivered in New York are not subject to tax.

#### Services

Sales of enumerated services, as set forth below, performed on tangible personal property delivered in New York are subject to tax:

- producing
- fabricating
- processing
- printing
- imprinting

## Exemptions Related to the Sale and Production of a Film

### Sales

If delivery takes place in New York – taxable unless

- a. Purchased for resale (form ST-120)- usually editor and production company transaction.
- b. Delivered in intangible format
- c. Other exemptions

Examples:

1. Used in production (form ST-121)
2. Used in broadcasting (form ST-121)

### Purchases

Generally, purchases of tangible personal property and services, otherwise subject to tax, are exempt if used directly and predominantly in the production, including editing, dubbing, and mixing of a film for sale regardless of the medium by means of which the film is conveyed to a purchaser.

Directly – property is actually used in the production phase of a film (excludes administrative activities)

Predominantly – property must be used more than 50% directly in the production of a film.

## Film

- Feature
- Documentary
- Shorts
- Television
- Television commercials
- Similar production

## Stages of Production

- Pre-production
- Production
- Post-production
- Sales and distribution

## Utilities

Generally, purchases of utilities services, otherwise subject to tax, are exempt if used directly and exclusively in the production, including editing, dubbing, and mixing of a film for sale regardless of the medium by means of which the film is conveyed to a purchaser.

Directly – means utilities (i.e., electricity, fuel, etc.) are used during production to operate production machinery or equipment.

Exclusively – means the utilities are used 100% directly in production

## Direct Pay from Production Company to Editor

Relationship between production company and editor (subcontractor) is not changed due to the production company's instruction to the advertising agency that payment be made to the editor.

## NYS Commercial Tax Credit Program

Designed to increase the production of commercial filming in NYS

Credit up to \$7 million per year

- \$1 Million credit - 20% of incremental growth

- \$3 Million credit - 5% of qualified downstate production over \$500,000

- \$3 Million credit - 5% of qualified upstate production over \$200,000