

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”). Petitioner asks whether its per minute charge and the annual membership fee are subject to New York State and/or local sales tax under Articles 28 and 29 of the New York Tax Law. We conclude that both the Petitioner’s annual membership fee and per minute charges are subject to tax. The Petitioner also asks whether the rental fees paid by business owners to Petitioner are subject to New York State and/or local sales tax under Articles 28 and 29 of the New York Tax Law. We conclude that the rental fees are subject to sales tax.

Facts

Petitioner provides safe and secure climate-controlled doghouses (“units”) at varying locations throughout Brooklyn for dog owners to store their dogs while running errands. Petitioner rents the units for a monthly fee to business owners to place outside their store location for the convenience of store customers that have a membership with Petitioner. For an annual membership fee, dog owners (“members”) have access to the units. Members can locate and reserve a unit on their phones using the Petitioner’s mobile app. Once the dog goes inside the unit, the door closes and locks automatically. The member then is free to run errands while the dog is stored in the climate-controlled unit. The units are connected to the Internet with interior webcams so members can remotely view their dogs on their smartphones.

Members can use the units as often or as infrequently as they want once they have paid the annual membership fee. Members also are charged a per minute fee for every minute their dog is in the unit. The units can be reserved in advance or, if available, used spontaneously.

Analysis

Petitioner asks whether the per minute charges for the use of the units are subject to sales tax. Sales tax is imposed on the receipts from every retail sale of tangible personal property, with certain enumerated exceptions. *See* Tax Law § 1105(a). Sales tax is further imposed on “storing all tangible personal property not held for sale in the regular course of business and the rental of safe deposit boxes or similar space.” Tax Law § 1105(c)(4). Under Tax Law § 1101(b)(6), tangible personal property is defined as “corporeal personal property of any nature.” Dogs are considered tangible personal property for sales tax purposes. *See* 20 NYCRR 526.8(a)(4); TSB-A-08(17)S. In *American Locker Co. v. Gallman*, 38 A.D.2d 105 (1972), the court determined that the term “storing” encompasses the rental of lockers to store baggage for up to 24 hours, holding that “there is no reason to limit its application to long-term custody.”

Here, Petitioner states that members may store their dogs in the units for up to ninety consecutive minutes and up to three hours in a 24 hour period. Accordingly, the cents-per-minute charge for storing dogs is taxable under § 1105(c)(4).

Tax Law § 1105(a) imposes sales tax on the “receipts from every retail sale of tangible personal property, except as otherwise provided.” In *Costco Wholesale Corporation*, the Department determined that an annual membership fee “paid by members for access to its warehouse sales facilities is subject to sales tax pursuant to Section 1105(a) of the Tax Law, since in substance, the membership fee is a prepayment for the merchandise sold by Petitioner.” TSB-A-92(66)S. Similarly, in *Norman Eiger*, the Tax Department found that membership fees that entitled members to reduced rental charges were subject to sales tax. TSB-A-81(20.1)S. Petitioner’s annual membership fee is similarly a prepayment for access to Petitioner’s units for storing dogs and is taxable under § 1105(c)(4) as a sale of storage services.

Finally, the Petitioner asked about the taxability of the rental of the units to business owners. Tax Law § 1105(a) imposes tax on “the receipts from every retail sale of tangible personal property.” Under § 1101(b)(5), the rental of the unit constitutes a sale. Petitioner rents the units to business owners for a monthly fee. Therefore, under Tax Law § 1105(a), sales tax is due on the monthly fees paid by business owners for the rental of tangible personal property.

DATED: July 14, 2020

/S/

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.