

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

TSB-A-86(10)S  
Sales Tax  
March 7, 1986

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S850611A

On June 11, 1985, a Petition for Advisory Opinion was received from the Storage Shed, 36 Smith Bridge Road, Saratoga Springs, New York 12866.

The issue raised is whether the rental of a self-service storage unit is the rental of real property and therefore exempt from the tax imposed on storage under Section 1105(c)(4) of the Tax Law.

Petitioner states that it is his intention to lease specific spaces (e.g., 10' x 10' areas) to tenants. The tenants may provide in the space leased, any storage racks, cabinets or other physical facilities required.

Additionally, Petitioner states that:

1. The building in which the storage areas are located is open to tenants 24 hours a day, 7 days a week, 52 weeks a year; the building is locked but the tenants have keys to enter the building and may come and go as they please. Each storage area is identified by number.
2. The tenants' storage areas are enclosed and can be locked. Each tenant supplies his own lock. The lease specifically prohibits entry of a storage area by Petitioner except in emergencies or to inspect and repair the premises.
3. The tenants are not required to sign in or out whenever they enter or leave.
4. The tenants are not required to give any notice that they are accessing the storage area.
5. The building is insured by Petitioner, however, the contents of storage areas are not insured by Petitioner. The tenants bear all risk of loss of contents of storage areas.
6. The tenant may not store any flammable materials, explosives, perishable food stuffs, contraband, live animals, or materials or goods which emit odor.
7. Petitioner has a minimum rental period of one month. The rental continues thereafter on a month to month basis.

Section 1105(c)(4) of the Tax Law imposes a tax on receipts from the service of "[s]toring all tangible personal property not held for sale in the regular course of business and the rental of safe deposit boxes or similar space."

The sales and use tax regulations further explain this provision as follows:

While the tax is imposed on the service of providing storage space, it is not imposed on the lease of real property for storage. A lease can be distinguished from the provision of storage space, in that under a lease, the tenant contracts for a certain amount of footage in a specific location, the tenant has unlimited control of access to the space, and may supply his own racks, cabinets and other physical facilities. 20 NYCRR 527.6(b)(2).

Thus, the rental of a self-service storage room is exempt from sales tax if it constitutes the rental of real property for storage but taxable if it is the service of providing storage space.

As long as each storage area leased by Petitioner consists of a specific storage unit identified by number and separately enclosed, it meets the requirement of the regulation that the contract be for a certain amount of footage in a specific location.

Furthermore, the tenant will be considered to have unlimited control of access to the space if Petitioner relinquishes all control of the space rented. In the instant case, the tenant is considered to have unlimited control since the tenant has access to his storage space around the clock, since he places his own lock on the storage space and since the lease specifically prohibits entry by the Petitioner into the storage areas except in emergencies or to inspect and repair the premises. (See: Technical Services Bureau Memorandum TSB-M-86(3)S).

Additionally, since the tenants may provide their own storage racks, cabinets or other physical facilities, the third requirement of the regulations is met.

In addition to the three tests stated above, the lease of storage space will be exempt only if it does not consist of a storage service. The essence of a storage service is the relinquishment of possession and control of the stored goods by their owner to the proprietor of the property in which they are stored. Examples of this would be receiving, handling, storing or forwarding of the lessee's personal property by the lessor. If the Petitioner does not provide any such service or any other service which would require the owner of the goods to relinquish to the lessor possession and control of the goods, and if the Petitioner meets the three requirements of regulation section 527.6(b)(2),

TSB-A-86(10)S  
Sales Tax  
March 7, 1986

then the Petitioner will not be considered to be providing a taxable storage service and will not be required to collect sales tax on receipts from the rental of its storage units.

DATED: March 7, 1986

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

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