

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

TSB-A-91 (15)S
Sales Tax
January 28, 1991

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S901221B

On December 21, 1990 a Petition for Advisory Opinion was received from Elbridge Mini Storage, 215 Chamberlin Road, Jordan, New York 13080.

The issue raised by Petitioner, Elbridge Mini Storage, is whether the rental of self-service mini-storage units are subject to the sales tax imposed on storage pursuant to Section 1105(c)(4) of the Tax Law.

Petitioner is engaged in the business of leasing self-service mini-storage units pursuant to a standard lease agreement. Petitioner rents rooms located in New York State to businesses and individuals for storage purposes only. The rental units are in special purpose buildings and range in size. The standard agreement identifies the room being rented by room number, building, dimensions and square footage. Rentals are on a month by month basis. The rent is established by the square footage leased and has no bearing on the volume of goods stored.

Each room is separated within the building by four walls, ceiling, floor and doors which lock. Petitioner neither provides locks for doors nor possesses duplicate keys for entrance into rented spaces. Petitioner is prohibited from entering the rented premises except upon default in payment of rent, to make repairs or in an emergency situation.

The lessee makes his own arrangements to move his personal property to and from the rented area. Petitioner is not obligated to perform any service involving receiving or handling of lessee's personal property. The lessee is not prohibited from supplying his own racks, cabinets and other physical facilities.

The self-service storage buildings are open seven days per week providing 24 hour unlimited access to the lessee.

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."

Section 527.6(b)(2) of the Sales and Use Tax Regulations provides that:

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.

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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.

Since each storage area leased by Petitioner consists of a specific storage unit identified by room 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 lessee will be considered to have unlimited control of access to the space if the lessor relinquishes all control of the space rented. In the instant case, the lessee has unlimited control since the lessee 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, to inspect and repair the premises, or in the event of default in the payment of rent. (See: Technical Services Bureau Memorandum TSB-M-86(3)S).

Additionally, since the lessees are not prohibited from providing 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. Since Petitioner does not provide any such service or any other service which would require the owner of the goods to relinquish to Petitioner possession and control of the goods, and since Petitioner meets the three requirements of section 527.6(b)(2) of the Sales and Use Tax Regulations, therefore 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 the storage units. Storage Shed, Adv Op, St Tx Comm, March 7, 1986, TSB-A-86(10)S.

DATED: January 28, 1991

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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