

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

TSB-A-91 (40)S
Sales Tax
May 9, 1991

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S901204B

On December 4, 1990 a Petition for Advisory Opinion was received from Gibney Leasing Corp. of Florida, 440 NW Market Place, Port St. Lucie, Florida 34986.

The issue raised by Petitioner, Gibney Leasing Corp. of Florida, is whether its purchases of storage containers and storage trailers for resale are subject to the imposition of sales tax.

Petitioner rents storage containers and storage trailers. The storage units are delivered by Petitioner to its customer's location in New York and picked up at the termination of the rental period. A separate charge is billed for delivery and pick up.

Section 1105(a) imposes a tax upon "[T]he receipts from every sale of tangible personal property. . ."

Section 1101(b)(4)(i) defines, in part, a retail sale as "A sale of tangible personal property to any person for any purpose, other than (A) for resale as such, . . ."

Section 526.7 of the Sales and Use Tax Regulations provides in part that:

(1) The words sale, selling or purchase mean any transaction in which there is a transfer of title or possession, or both, of tangible personal property for a consideration.

(2) Among the transactions included in the words sale, selling or purchase are exchanges, barter, rentals, leases or licenses to use or consume tangible personal property. (Emphasis supplied)

Section 526.6(c)(1) of the Sales and Use Tax Regulations provides that:

Where a person, in the course of his business operations, purchases tangible personal property or services which he intends to sell, either in the form in which purchased, or as a component part of other property or services, the property or services which he has purchased will be considered as purchased for resale, and therefore not subject to tax until he has transferred the property to his customer.

Section 1105(a) of the Tax Law imposes a sales tax on "receipts from every retail sale of tangible personal property". However, where a purchaser acquires such property for the purposes of resale, which includes rental of the property, the purchase is exempt from sales tax in accordance with Section 1101(b)(4) of the Tax Law and Sections 526.6(c)(1) and 526.7(a)(1) of the Sales and Use Tax Regulations; See U-Need-A-Roll Off Corporation v New York State Tax Commission, 111 AD2d 457.

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Accordingly in the instant case if the Petitioner is purchasing the storage containers and storage trailers exclusively for the purpose of renting them to its customers and provides no other services to its customers other than the delivery and pick up of the containers, then its purchases of said containers are not subject to the imposition of sales tax.

DATED: May 9, 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.