

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

TSB-A-93 (2)M
Estate Tax
April 16, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M930202A

On February 2, 1993, a Petition for Advisory Opinion was received from Metropolitan Moving and Storage Association, Inc., 475 Park Avenue South, New York, New York 10016.

The issues raised by Petitioner, Metropolitan Moving and Storage Association, Inc., are:

1. Whether a household goods warehouseman may release personal property placed in storage without liability for estate tax in the absence of a "waiver of notice" from the decedent's personal representative.
2. Whether the valuation disclosed on the warehouse receipt and in the storage contract is relevant to the warehouseman's obligation to obtain a waiver of notice.
3. Whether if subsequent events disclose that the property in storage has a value exceeding the value disclosed on the warehouse receipt or in the storage contract will have an impact on the liability of the warehouseman to obtain a waiver of notice from the decedent's personal representative.
4. Whether the responsibilities of the warehouseman differ for the personal representative of a decedent who was a New York State resident as opposed to the personal representative of a decedent who was not a New York State resident.

Petitioner is a trade association comprised of approximately forty storage warehouse operators engaged in the business of providing storage and safekeeping services. Each member of the association is a "warehouseman" as that term is defined in Section 7-102(h) of the New York Uniform Commercial Code and is licensed as a "storage warehouse operator" by the New York City Department of Consumer Affairs as required by Article 48 of the New York City Administrative Code and regulations of the New York City Department of Consumer Affairs.

At the time of a household goods storage transaction, the warehouseman issues a "warehouse receipt" (i.e., an inventory) to the storage depositor and obtains a signed "storage contract" (collectively, the "storage documents"). At the time the goods are placed in storage, the storage documents discloses the storage depositor's statement of the value of the goods for insurance and/or liability purposes. Under applicable law, this statement of valuation determines both the storage rates which will be charged by the warehouseman and the liability of the warehouseman for loss or damage to the goods while in storage.

While most storage documents disclose a dollar value of less than \$30,000, in some cases the value declared by the storage documents is higher. In any event, irrespective of the amount of valuation declared by the storage documents, the warehouseman seldom makes any judgment as to the actual value of the goods placed in storage since its liability is limited and defined by the amount disclosed in the storage documents.

After the death of a storage depositor, his or her personal representative seeks release of the property in storage. At this time, the warehouseman requests either (a) a Certificate of Letters of Testamentary; (b) a Certificate of Letters of Administration; or (c) other conclusive evidence as to the authority of the person demanding release of the decedent's property from storage.

Section 975 of the Tax Law provides, in pertinent part, as follows:

* * *

(e) Liability of persons in possession of property.-- (1) Notice and provision for tax. Unless the commissioner of taxation and finance waives the requirements of this subsection as provided in paragraph three of this subsection, no safe deposit company, trust company, bank, corporation, firm or other person having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of such a decedent and one or more persons, shall deliver or transfer the same to the executor of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless:

(A) notice of the time and place of such intended delivery or transfer is served upon the commissioner at least ten days prior to said delivery or transfer, and

(B) a sufficient portion or amount of such property is retained to pay any tax and interest which may thereafter be assessed with respect to such securities, deposits or other assets. The commissioner or his representative may examine said securities, deposits or assets at the time of such delivery or transfer. For the purpose of this section, the term "other assets" shall include the shares of the capital stock of or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer.

(2) Liability for tax. If any person fails to serve the notice, allow the examination, or retain a sufficient portion or amount as required by this subsection he shall, in addition to any applicable penalties, be liable for payment of the tax and interest due, or thereafter to become due, with respect to such securities, deposits or other assets.

The payment of tax and interest thereon may be enforced in an action brought by the commissioner of taxation and finance in any court of competent jurisdiction.

* * *

(5) Nonresident. In the case of a deceased individual who at his death was not a resident of New York State, this subsection shall apply only with respect to tangible personal property having an actual situs in this state. (emphasis added)

With respect to issue "1", pursuant to Section 975(e) of the Tax Law any corporation, firm or other person having in its possession or under its control assets belonging to or standing in the name of a decedent must obtain a waiver from the decedent's executor or survivor(s) before releasing such assets to any person. Therefore, a warehouseman must obtain a waiver before releasing the decedent's property to the decedent's personal representative.

Concerning issues "2" and "3", pursuant to Section 975(e) of the Tax Law the value of the property belonging to the decedent is not a determining factor to be considered when ascertaining whether a waiver is required. Accordingly, in all cases a waiver must be obtained by the warehouseman before releasing the decedent's property to the decedent's personal representative.

As for issue "4", pursuant to Section 975(e)(5) of the Tax Law since the property being held by the warehouseman is tangible personal property whether the decedent was a resident or nonresident of New York State is not a determining factor to be considered when ascertaining whether a waiver is required. Therefore, in all cases a warehouseman must obtain a waiver before releasing the decedent's property to the decedent's personal representative.

DATED: April 16, 1993

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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