

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

TSB-A-08(49)S
Sales Tax
November 6, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S080108A

On January 8, 2008, the Department of Taxation and Finance received a Petition for Advisory Opinion from KPMG LLP, % Dennis C. Prestia, 345 Park Avenue, New York, New York 10154.

The issues raised by Petitioner, KPMG LLP, are:

1. Whether the optional transportation services fee charged by ABC under the Current Agreement is subject to New York sales and use tax.
2. Whether the optional transportation services fee charged by ABC under the Transportation Service Agreement is subject to New York sales and use tax.

Petitioner submitted the following facts as the basis for this Advisory Opinion.

Petitioner's client, hereinafter ABC, manufactures and rents portable storage units to the public for use as an alternative means of storage for the mini-storage market or as an alternative means for customers to conduct physical moves of household or business goods.

ABC generally provides short-term rentals of portable storage units either at the customer's site or in ABC's warehouses. ABC provides pickup and delivery service of the storage units. ABC charges the customer rental fees for the lease of storage units, as well as charges for picking up and delivering the storage units either to the customer's site or to ABC's warehouses. If the customer chooses to store the storage units in ABC's warehouse, the customer will be liable for an additional fee for the use of ABC's warehouse.

In addition to the rental of the storage units, ABC also provides transportation services to move the customer's goods to another location. ABC's transportation services include both local and long distance moves. In the event the customer decides to avail itself of ABC's transportation services, the customer will be charged, in addition to the rental/delivery/pickup charges, a transportation service charge based upon the number of storage units and a mileage fee. The transportation service fee is an optional charge elected by the customer.

ABC's standard agreement used with all customers is titled "Rental Agreement" (hereinafter known as the "Current Agreement") for the lease or rental of storage units. Under the Current Agreement, ABC leases to the customer the storage unit for a monthly rental fee. The Current Agreement also provides that the customer will pay ABC an additional fee for the delivery or retrieval of the storage units to or from the customer's location. In cases where the

customer elects to contract with ABC for transportation services, the Current Agreement provides that an additional fee may be incurred in connection with moving the contents of the storage unit(s) from one location to another. The monthly rental fee is unaffected by the transportation service fee. In all instances, the optional transportation service fee is a separately stated charge on ABC's invoice to the customer.

As an alternative to the Current Agreement, ABC is proposing to bifurcate the transportation service from the rental of the storage unit. Under this proposal, the Current Agreement will be maintained by ABC solely for the rental of the storage unit and related charges (i.e., delivery/pick-up fees, warehouse fee). If the customer chooses to avail itself of ABC's transportation services, a separate transportation service agreement ("Transportation Service Agreement") will be executed. Under the Transportation Service Agreement, the customer will separately contract with ABC to move its goods to another location. As under the Current Agreement, the transportation service fee will be calculated based upon the number of storage units to be transported and a mileage fee.

Applicable law and regulations

Section 1101(b) of the Tax Law provides, in part:

When used in this article for the purposes of the taxes imposed by subdivisions (a), (b), (c) and (d) of section eleven hundred five and by section eleven hundred ten, the following terms shall mean:

* * *

(3) Receipt. The amount of the sale price of any property and the charge for any service taxable under this article . . . valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery . . . regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery or transportation, transmission, or distribution is provided by such vendor or a third party, but excluding any credit for tangible personal property accepted in part payment and intended for resale. . . .

* * *

(5) Sale, selling or purchase. Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including, with respect to computer software, merely the right to reproduce), conditional or otherwise, in any

manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 1105(a) of the Tax Law imposes sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 1105(c)(4) of the Tax Law imposes sales tax on the receipts from every sale, except for resale, of the following services:

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.

Section 526.5(g) of the Sales and Use Tax Regulations provides, in part:

(g) Shipping or delivery. (1) Shipping or delivery charges by a vendor to its customer for the cost of transporting tangible personal property to the customer are part of the vendor's receipt subject to tax where the sale of the property is subject to tax or where taxable services were performed on the property. This is so regardless of whether the vendor separately states such charges in a written contract or on an invoice and regardless of whether the vendor ships or delivers the property itself or hires a third party to ship or deliver the property. Similarly, charges by a vendor to its customer for picking up the customer's property upon which the vendor is to perform taxable services are part of the vendor's receipt from the sale of the service subject to tax.

(2) A charge by a vendor to its customer for the cost of transportation of the property from a supplier, manufacturer, warehouse or catalog or other distribution point to the vendor's place of business is also part of the vendor's receipt from the sale of the property to the customer subject to tax, whether the charge is designated as transportation, shipping, handling or in some other manner.

(3) A charge for transporting or delivering property by a transportation or delivery company to the person or business requesting that the property be transported or delivered is not a receipt subject to tax, since transportation and delivery are not themselves services subject to tax.

Example 1: A vendor charges his or her customer \$15 for transportation of the customer's purchases. The purchases are transported from the vendor's place of business to the customer's home in New York. The customer is billed as follows:

Purchases	\$100.00
Transportation charges	<u>15.00</u>
Total	\$115.00

The vendor's entire receipt of \$115 is subject to tax, since it is for the sale of taxable property, including the vendor's separately stated portion of the receipt labeled "transportation."

Example 2: A vendor charges his or her customer \$15 for shipping of the customer's purchases. The purchases are drop-shipped from the manufacturer to the purchaser in New York. The customer is billed as follows:

Purchases	\$100.00
Shipping	<u>15.00</u>
Total	\$115.00

The entire \$115 is subject to tax, for the same reason as in Example 1.

* * *

Example 6: A delivery service company makes available to the general public an area in its warehouse where customers may drop off packages to be delivered to persons or businesses in the United States for a fee. The customer dropping off a package for delivery is required to complete an invoice stating his or her name and address, the name and address where such package is to be delivered, and the contents and value of the package. The delivery service company charges a fee to the customer for delivering the package. This fee is based on the weight and value of the package and the distance it is to be delivered. The company's charge to the customer for shipping the package is not subject to sales tax. This is purely a transportation service, which is not a taxable service.

Example 7: The ABC Moving Company transports household goods for homeowners from one place to another, as well as business property owned by businesses moving from one place to another. ABC's charges to its household or business customers to move their property are not subject to tax, since transportation of goods, as such, is not itself a taxable service.

Opinion

ABC manufactures and rents portable storage units to the public for use as an alternative means of storage for the mini-storage market or as an alternative means for customers to conduct physical moves of household or business goods. ABC provides pickup and delivery service of the storage units. ABC charges the customer rental fees for the lease of storage units, as well as charges for picking up and delivering the storage units either to the customer's site or to ABC's warehouses. If the customer chooses to store the storage units in ABC's warehouse, the customer will be liable for an additional fee for the use of ABC's warehouse.

ABC's charges for the rental of a storage unit are subject to sales tax as a rental or purchase of tangible personal property. See sections 1101(b)(5) and 1105(a) of the Tax Law. ABC's charges for delivery of the empty storage unit to the customer's location and for return of the empty storage unit to ABC are subject to sales tax as a part of the taxable receipts from ABC's sales or rentals of the tangible personal property. See section 1101(b)(3) of the Tax Law and section 526.5(g) of the Sales and Use Tax Regulations.

ABC's fee for the use of space to store the unit in its warehouse is subject to sales tax under section 1105(c)(4) of the Tax Law. ABC's charges for delivery and return of the storage unit (empty or loaded) between the customer's location and ABC's warehouse in conjunction with ABC's provision of storage services are subject to sales tax as a part of the taxable receipts from such services. See section 1101(b)(3) of the Tax Law and section 526.5(g) of the Sales and Use Tax Regulations.

Generally, transportation charges by household movers are not subject to the sales tax. In this case, ABC generally rents or leases a storage unit to its customer (other than in conjunction with its provision of storage services). As previously noted, the taxable charges for such rental or lease include the pickup and return delivery charges. Customers may rent ABC's portable storage units (including delivery and pick up) without availing themselves of ABC's transportation service. Where the customer does elect to contract with ABC for transportation services, as provided in the Current Agreement, an additional fee is incurred in connection with moving the storage unit and its contents from one customer location to another customer location. This optional transportation service fee is a separately stated charge on ABC's invoice to the customer. Transportation services are not enumerated in section 1105(c) of the Tax Law as a service subject to sales tax. Accordingly, where ABC sells this optional transportation service to the lessees of its portable storage units and the charges for such services are reasonable in relation to the service provided (e.g., based upon distance traveled, number of units transported, etc.), and are separately stated on the bill or invoice rendered to the lessee, such transportation charges are not subject to sales tax, regardless of whether the transportation

TSB-A-08(49)S
Sales Tax
November 6, 2008

services are offered in connection with the Current Agreement, or under a separate Transportation Service Agreement from the rental of the storage unit.

DATED: November 6, 2008

/s/
Jonathan Pessen
Tax Regulations Specialist IV
Taxpayer Guidance Division

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.