

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S140324A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether receipts received for rental of self-serve mini-storage units from its customers constitute a lease of real property for storage and, therefore, are not subject to New York State sales tax.

We conclude that Petitioner's rental of self-serve mini-storage units constitutes rental of real property, the receipts from which are not subject to sales tax.

Facts

Petitioner operates a self-serve mini-storage facility and rents mini-storage units to individuals pursuant to a standard lease agreement. The lease agreement identifies the unit number, the building, the size and the space rented to each customer. The storage units are housed in two separate special purpose buildings. The units are of different sizes and are separated from one another by metal partitioning.

The customer provides his or her own lock and has unrestricted access to the leased storage unit. The self-service storage facility is open 24 hours a day, 7 days a week and 52 weeks a year. The customer can supply his or her own racks, cabinets, and other physical facilities.

Petitioner can enter the rented unit only in an emergency, in order to inspect and conduct repairs and improvements, and in the event of non-payment of rent after 60-days. Other than the rental of storage units, Petitioner does not provide any other service(s), such as transportation, loading and unloading, to its customers.

Analysis

Tax Law § 1105(c)(4) imposes sales 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.”

We conclude that Petitioner is not providing a storage service. The essence of a storage service subject to sales tax is the relinquishment of possession and control of the stored goods by their owner to the person providing the storage service. Examples of this would be receiving, handling, or storing of the lessee's personal property by the lessor. In the instant case, Petitioner

does not provide any such service or any other service that would require the owner of the goods to relinquish to Petitioner possession and control of the goods.

We further conclude that Petitioner's charges to its customers are charges for the rental of real property rather than taxable receipts from the provision of storage space. Although sales tax is imposed on the provision of 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." *See* 20 NYCRR § 527.6(b)(2).

Here, Petitioner contracts with its customers to rent specific storage units with a stated amount of square footage in a specific location. Petitioner's lease identifies the unit number, the building, the size and the space rented to each customer. Customers have unlimited control because they have access to the storage unit year round, are required to place their own lock on the storage unit, and may provide their own storage racks, cabinets or other physical facilities. The lease specifically prohibits entry by Petitioner into the storage unit except in the event of an emergency, to inspect and repair the premises, or in the case of a default of 60 days or more in the payment of rent. *See* TSB-M-86(3)S.

Because Petitioner's rental of storage units meets the standards for a lease under Sales and Use Tax Regulation § 527.6(b)(2), and the customer does not relinquish possession or control of its stored property to Petitioner, Petitioner's charges to its customers for self-serve mini-storage units are not subject to State and local sales taxes.

DATED: March 18, 2015

/S/

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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.