

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

TSB-A-85(12)S
Sales Tax
May 20, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S831128B

On November 28, 1983 a Petition for Advisory Opinion was received from Record Retention Center Corporation, 208 South Avenue, Rochester 14604.

The issue raised is whether the service provided by the petitioner is the storage of tangible personal property, taxable pursuant to section 1105(c)(4) of the Tax Law, or the lease of real property which is excluded from the imposition of sales tax.

Petitioner operates a computerized record storage system, providing warehouse storage space for financial records and offering related services, such as pick-up and delivery, computer indexing, filing, copying, and record destruction.

Petitioner states that a customer's records are stored in an open warehouse in an area assigned and accessible only to that particular customer. The space allocated to each customer is not enclosed or secured from areas assigned to others. Space for storing computer tapes, discs and microfiche is available in a controlled climate atmosphere. Customers may use their own record containers, but storage racks are provided by the petitioner. Access to the premises is available 24 hours a day, but only under the supervision of security personnel.

In a sample lease agreement supplied by Petitioner the customer agrees to lease a number of storage units (a unit equals one square foot of storage area) in a "common space". A price schedule appended to the Petition bases storage charges on cubic feet of warehouse space occupied.

Section 1105(c)(4) of the Tax Law imposes a tax on receipts from the following service:

"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 527.6 of the Sales and Use Tax Regulations provides, in part, as follows:

"(a) Definition. Storage is the provision of a place for the safekeeping of goods, without regard to the manner of payment or length of time of the service.

(b) Imposition. (1) The tax is imposed on the sale, except for resale, of the service of storing tangible personal property, and the rental of safe deposit boxes and similar space.

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(2) 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.

The facts presented indicate that petitioner's customers do not lease a specific location, do not have unlimited access to the stored records, and do not supply racks and similar storeroom fixtures. Accordingly, petitioner provides the services of storage to its customers and its charges therefor are subject to tax under section 1105(c)(4) of the Tax Law.

DATED: April 30, 1985

FRANK J. PUCCIA
Director
Technical Services Bureau

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