

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

TSB-A-99(1)S
Sales Tax
January 19, 1999

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S980219A

On February 19, 1998, the Department of Taxation and Finance received a Petition for Advisory Opinion from A.J. Logistics, Inc., P.O. Box 15268, Ft. Wayne, Indiana 46885. Petitioner, A.J. Logistics, submitted additional information with respect to the Petition on June 23, 1998.

The issue raised by Petitioner, A.J. Logistics, Inc., is whether Petitioner is required to register with New York State and collect and pay sales tax on the services it provides to its customers in New York State.

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

Petitioner provides logistics services to its customers, with respect to its customers' construction projects. These services include the following:

- a) scheduling of all receiving, warehousing and delivery of materials and fixtures;
- b) warehousing;
- c) receiving of building materials, fixtures and furniture (to be used in construction projects of its customers);
- d) inspection of the materials, fixtures and furniture received;
- e) the separation of the materials, fixtures and furniture received and staging of these items for delivery to the job site as the customer requests;
- f) delivery of the materials, fixtures and furniture to the job site as needed; and
- g) monitoring projects and trouble shooting as problems develop on projects.

All materials, fixtures and furniture are owned by Petitioner's customers and at no time does ownership of the goods transfer to Petitioner or the warehouse or shipping companies that Petitioner hires. Customers contact Petitioner for the purpose of obtaining a quote for the cost of handling building materials, fixtures and furniture for each project.

Petitioner provides its customers with its services by entering into Service Agent Agreements with warehouse companies. These agreements can be for a period of less than thirty days to more than one year. The sample Service Agent Agreement included with the Petition provides, in part:

A.J. Logistics, Inc. ("Company"), an Indiana corporation, hereby appoints warehousemen ("Service Agent"), whose name is listed on the reverse/front side hereof, as its service agent, and Service Agent accepts the appointment, subject to the limitations and further agreements herein. The scope of this agreement is limited exclusively to providing Company with warehousing and local delivery services ...

The warehouse companies bill Petitioner and are paid by Petitioner. Petitioner in turn bills its customers on a flat fee basis per project for its costs and its service fee or profit.

The sample Customer Agreement included with the Petition provides, in part:

Customer hereby contracts for services in accordance with the specification as fully set forth on the face of this Agreement and AJ Logistics, Inc. (AJL) does hereby undertake and agree to provide said services utilizing as warehousemen qualified warehouses with facilities in the general community wherein the services is [sic] to be performed....To implement this Agreement, Customer agrees to direct its vendors and suppliers to ship the supplies to Customer as follow: (Customer's name) c/o AJL warehouse. The furnishings shall be stored by AJ Logistics/warehousemen awaiting further transportation instructions from the storage to the destination to the job site or inside as specified by Customer.

Also, in the Schedule of Rates, which is part of the sample Service Agreement, under the headings of "WAREHOUSE HANDLING IN" and "WAREHOUSE STORAGE" it is set forth that Petitioner, in part, charges certain rates as differentiated by a "Pallet Charge", a "Carpet Roll Charge" and a "Ceiling Charge" for the handling and storage of goods, respectively.

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 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. For special rules governing computation of receipts, see section eleven hundred eleven.

* * *

(8) Vendor. (i) The term "vendor" includes:

(A) A person making sales of tangible personal property or services, the receipts from which are taxed by this article; ...

Section 1105 of the Tax Law provides in part as follows:

§ 1105. Imposition of sales tax. On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

* * *

(c) The receipts from every sale, except for resale, of the following services:

* * *

(4) 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 1131 of the Tax Law, provides, in part:

§ 1131. Definitions. When used in this part IV,

(1) "Persons required to collect tax" or "person required to collect any tax imposed by this article" shall include: every vendor of tangible personal property or services; every recipient of amusement charges; and every operator of a hotel

Section 1134(a)(1)(i) of the Tax Law provides, in part:

Every person required to collect any tax imposed by this article, ... shall file with the commissioner a certificate of registration, in a form prescribed by the commissioner, at least twenty days prior to commencing business or opening a new place of business or such purchasing, selling or taking of possession or payment, whichever comes first

Section 527.6 of the Sales and Use Tax Regulations provides, in part:

Storage of tangible personal property. (Tax Law, § 1105(c)(4)) (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.

(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.

* * *

Example 2: A person stores his goods at a warehouse, in whatever space the warehouse company has available. The charges for such storage are taxable.

Example 3: A person stores his goods in a specific space in a building, and no other person has access to the space assigned. This is storage of tangible personal property and the charges are taxable.

* * *

(c) Exclusions. The storage of property held for sale in the regular course of business, and the sale of the service of storage for resale is not taxable.

Example 1: A furniture store maintaining part or all of its inventory in a public warehouse is not liable for tax on the storage charges because the tangible personal property is held for resale in the regular course of business.

Example 2: A cleaning establishment offering clothing storage services to its customers has the articles stored in the facilities of a public warehouse. Since the storage service acquired by the cleaning establishment is resold, no tax is due on the charge by the warehouse to the cleaning establishment. When billing the customer for storage services, the cleaning establishment must charge sales tax at the rate in effect at the point where the clothing is accepted for storage (either the customer's residence or location of the business) even though the storage facility may be located in an area having a different tax rate.

Opinion

A significant element of Petitioner's business activity is the provision of warehouse storage services to its customers. Petitioner provides these services by purchasing them directly from warehouse companies under the Service Agent Agreement, which creates a vendor-vendee relationship between Petitioner and the warehouse company. The services purchased by Petitioner are billed to and paid directly by Petitioner. The Service Agent Agreement designates the warehouse company as Petitioner's service agent.

Petitioner, in turn, resells the warehouse storage services to its customers under the Customer Agreement. It should be noted that under Section 1.03 of the Customer Agreement it is stated "To implement this Agreement, Customer agrees to direct its vendors and suppliers to ship the supplies to Customer as follows: (Customer's name) c/o AJL warehouse. The furnishings shall be stored by AJ Logistics/warehousemen awaiting further transportation instructions from the storage point to the destination to the job site or inside as specified by Customer."

The warehouse storage service provided by Petitioner to its customers is an enumerated taxable service under Section 1105(c)(4) of the Tax Law. Where the warehouse facility is located in New York State, Petitioner is a person making sales of taxable services in New York State, and Petitioner is a vendor as defined in Section 1101(b)(8) of the Tax Law. Therefore, Petitioner is a person required to collect the sales tax in accordance with Section 1131 of the Tax Law. Accordingly, Petitioner is required to register with New York State for sales tax purposes pursuant to Section 1134 of the Tax Law.

The purchases of services by Petitioner from the warehouse companies are excepted from the imposition of sales tax in accordance with Section 1105(c) of the Tax Law as they represent purchases of services by Petitioner for resale to its customers. In order to purchase these services without payment of tax, Petitioner should present a warehouse company with a properly completed

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resale certificate (Form ST-120) within 90 days of the date of sale. See Section 1132(c) of the Tax Law and Section 532.4(d) of the Sales and Use Tax Regulations.

DATED: January 19, 1999

/s/
John W. Bartlett
Deputy Director
Technical Services Bureau

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