

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

TSB-H-81 (21) S
Sales Tax
February 11, 1981

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800722A

On July 22, 1980, a Petition for Advisory Opinion was received from AVM Corporation, P.O. Box 1000, Jamestown, New York 14701.

The issues raised by the Petition relate to the application of the sales tax provisions of the Tax Law to a series of transactions involving the sale and leasing of coin-operated checking lockers.

Petitioner is the parent company of a wholly-owned subsidiary. Petitioner has a division which manufactures coin-operated checking lockers. The wholly-owned subsidiary purchases the lockers from the manufacturing division of Petitioner for the purpose of leasing the lockers to various lessees both within and without New York State.

The leases entered into between Petitioner's subsidiary and its lessees include the following terms, among others:

1. the lessee is required to install and maintain the lockers;
2. the lessee is required to indemnify the lessor for damage claims arising from the use of the lockers;
3. The lessee is required to pay either a flat fee or a flat fee plus a percentage of revenues.

Petitioner inquires, first, whether the sale of the lockers by Petitioner to its subsidiary is subject to sales tax. Section 1105(a) of the Tax Law imposes a tax on the "...receipts from every retail sale of tangible personal property..." Section 1101(b) (4) of the Tax Law defines the term "retail sales" as "A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3) and (5) of subdivision (c) of section eleven hundred five" Section 1101(b) (5) of the Tax Law defines the term "sale" to include a rental or lease. Accordingly, when Petitioner's subsidiary purchases the lockers from Petitioner it makes such purchase for the purpose of "selling", i.e. leasing, the lockers to others. Therefore, the sale by Petitioner to its subsidiary is a sale for resale and consequently comes within the exclusion from the definition of retail sale contained in section 1101(b) (4) of the Tax Law. Petitioner is therefore not required to collect tax on its sale of the lockers to its subsidiary where the subsidiary furnishes to Petitioner a properly completed resale certificate (Form ST-120), as required by section 1132(e) of the Tax Law.

Petitioner next inquires whether its subsidiary is required to collect a tax on the receipts from the leasing of the lockers. The subsidiary's lessees provide their customers with the service of storage in lockers, a service the receipts from which are subject to tax under section 1105(c) (4) of the Tax Law. They do not "sell" the lockers themselves.

JAMES H. TULLY, JR., COMMISSIONER LOUIS M. JACOBSON, DEPUTY COMMISSIONER
FRANK J. PUCCIA, DIRECTOR

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Hence, the subsidiary's sale (i.e. lease) of the lockers to its lessees does not constitute a sale for resale so to come within the exclusion contained in section 1101(b)(4) of the Tax Law. The subsidiary is thus a vendor making sales of tangible personal property and must collect sales tax on the full amount of the rental payments made under the leases, whether flat fee or flat fee plus a percentage of revenue. The subsidiary is not required to collect tax on the entire income derived from the locker operation, understanding this to include all of the revenues received by a lessee from the locker service, because it is the subsidiary's lessee, and not the subsidiary itself, which is the vendor of the taxable service of storage and which must collect tax on the receipts from the provision of that service.

DATED: January 9, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau