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

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Sales Tax
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TAXABLE STATUS OF THE RENTAL OF SELF-SERVICE MINI-STORAGE UNITS

Reproduced below is a recent letter from Deputy Commissioner and Counsel, John P. Dugan, pertaining to the above subject. Only the date has been deleted.

> This is in response to your request for a ruling regarding the taxability, for purposes of section 1105(c)(4) of the Tax Law, of the rental of self-service mini-storage units pursuant to a standard lease agreement as submitted by you at our meeting of
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> You have stated in your submission that lessors of self-service storage units in New York State rent rooms to individual and business lessees for storage purposes. The rented rooms are generally located in special purpose buildings and range in size from 25 to 250 square feet. The standard agreement used by the self-service storage industry specifically identifies in each case the room being rented by room number, building, dimensions and square footage. Rentals are on a month by month basis. The rent is fixed and does not vary according to the volume of goods stored by the lessee.
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> Each rented room is an individual unit bounded by a ceiling, floor, four walls and a lockable door. Lessees provide their own locks for the doors and only the lessees keep the keys. Under the standard agreement, the lessor is prohibited from entering the rented premises except upon default in payment of rent, to make repairs or in an emergency situation.
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> The lessee makes his own arrangements to move his personal property to and from the rented room. The lessor is not obligated to perform any service involving receiving, handling, storing or forwarding the lessee's personal property.
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> Typically, self-service storage buildings are open seven days per week from approximately 7 or 8 a.m. to 10 p.m., 365 days per year. Lessees are free to come and go during the period when the building is open.
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> Section 1105(c)(4) of the Tax Law imposes a 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."
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> The sales and use tax regulations further explain this provision as follows:

> 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.
> 20 NYCRR 527.6(b)(2).

Thus, the rental of a self-service storage room is exempt from sales tax if it constitutes the rental of real property for storage but taxable if it is the service of providing storage space.

The regulations set forth three tests to identify a lease of real property for storage. First, the tenant must contract for a certain amount of footage in a specific location. Under the standard lease, this test is clearly met since the agreement specifies the precise building, room number, floor, dimensions and square footage of the room that is the subject of the lease agreement.

Secondly, the regulations provide that to qualify as a lease of real property the tenant must have unlimited control of access to the space. This test is merely a restatement of the long established rule of law that it is the transfer of absolute control and possession of property at an agreed rental which differentiates a lease from other arrangements dealing with property rights. Feder v. Caliguira, 8 NY2d 400(1960). Accordingly, it necessarily follows that a lease involves a possession exclusive even of that of the landlord. Layton v. Namm & Sons, 275 AD 246(1949). Thus, to be exempt, it is essential that the lessor relinquish all control of the space rented. The lessee's possession and control of the space must be to the complete exclusion of the lessor.

The lessee's exclusive possession of the space may be established by means of a lock (either lessor's or lessee's) on the door of the enclosed space if the key for the lock is solely under the control of the lessee and is not available to the lessor. As an alternative, if the lessor possesses either a duplicate or master key and thereby has access to the space, exclusive possession may nevertheless be found if a written lease agreement specifically provides that the lessor has no right of access to the space during the term of the rental except for purposes of collecting rent, making necessary repairs and in emergency situations.

Additionally, while "unlimited control" has traditionally been contemplated in terms of around the clock access to the property by the lessee, we recognize that this must be viewed in light of prevailing commercial practices. Today, many types of commercial rentals are not open around the clock. For example, commercial offices rented in large office buildings are often not open to their

tenants during all hours. Accordingly, "unlimited control" of the tenant may still be found if the space is accessible to the tenant during hours when other similar commercial rentals are generally accessible to their tenants.

Furthermore, it has long been recognized that limited access by a landlord in order to collect rent, to make necessary repairs or in emergency situations will not be construed as negating the tenant's exclusive possession of the space. Layton v. Namm & Sons, supra. Any such provision in a lease agreement will not disqualify an otherwise qualifying agreement.

Accordingly, I am of the opinion that the standard agreement transfers "unlimited control of access to the space" to the tenant within the meaning of the regulations since the door to the space is locked with a lock; the key to the lock is available only to the tenant; the tenant is free to come and go seven days per week from 7 or 8 a.m. to 10 p.m., 365 days per year and the lessor has no access to the space except for purposes of the collection of rent, to make necessary repairs and in emergency situations.

The regulations' third test for finding a lease of real property is that the tenant may supply his own racks, and other physical facilities. The standard agreement allows tenants to supply their own racks, cabinets and other facilities, thus meeting the final test.

In addition to the three tests stated above, the lease of storage space will be exempt only if it does not consist of a storage service. The essence of a storage service is the relinquishment of possession and control of the stored goods by their owner to the proprietor of the property in which they are stored. Osborn v. Cline, 263 NY 434 (1934). You have stated that the lessor is not obligated to perform any services involving receiving, handling, storing or forwarding the lessee's personal property. If the lessor does not provide any such service or any other service which would require the owner of the goods to relinquish to the lessor possession and control of the goods, the standard lease will not be deemed to be providing for a storage service.

To the extent that a lessor provides services to a lessee, either himself or through an agent, such as unloading vehicles or handling or transporting the goods to be stored, whether or not for an additional fee, the owner of the goods will not be considered to have relinquished possession and control of the stored goods as long as the owner of the goods or his agent is present during the rendering of such services and directs the actions of the individuals performing such services.

Accordingly, I am of the opinion that the rental of self-service mini-storage units pursuant to the terms set forth in your standard lease agreement meets each of the tests set forth in regulation section 527.6(b)(2) and thus qualifies as the lease of real property for storage. As such, these rentals are not subject to the sales tax imposed under section 1105(c)(4) of the Tax Law.