

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-08(64)S
Sales Tax
November 19, 2008

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S080731A

SAM (Store and Move), LLC ("the Corporation") is engaged in the business of renting, moving, and storing portable containers. A petition received on July 31, 2008 requests an advisory opinion about the Corporation's sales and compensating use tax obligations with respect to the following sales of goods, services and/or other intangibles:

A. Transportation charges

1. Initial Delivery Charge
2. Move to New Location
3. Move to Warehouse
4. Move from Warehouse to New Location
5. Final Pick-Up Charge
6. Additional Stop Charge
7. Non-Paved Surface Fee – Delivery/Pick-Up
8. Non-Paved Surface Fee – Transportation

B. Rental and Storage charges

1. Monthly Rental of Container
2. Monthly Storage Outside Warehouse
3. Monthly Storage Inside Warehouse
4. Monthly Damage Waiver Rate
5. Container Cleaning Charge
6. Warehouse Access Fee
7. Reschedule/Cancellation Fee
8. Container Repair Services

C. Moving Supplies and Equipment

1. Miscellaneous Supplies for Sale
2. Dollies and Pads for Rent

Facts

The Corporation operates through independent dealers located throughout the United States. Each independent dealer owns or leases portable storage containers, inside or outside warehouse space, and container delivery equipment. Each dealer enters into a Dealer Agreement with the Corporation whereby the dealer agrees to provide containers for use by the Corporation's customers and to deliver, transport, and store these containers pursuant to instruction of the Corporation.

The Corporation contracts directly with customers for container services, booking all customer orders for containers, associated container delivery and storage services, and other incidentals through its call center. The Corporation then arranges with each dealer to have the dealer deliver and pick up containers for customers, transport containers to and from various locations, and store containers at the dealer's inside or outside warehouse locations. The Corporation handles nearly all payments, collections, and customer service issues, and pays the dealers transaction-based commissions for services provided.

The Corporation enters into a Rental Agreement with each customer. The Rental Agreement provides that the customer is renting a container from the Corporation, that the Corporation will arrange delivery of the container to a location designated by the customer (such as a residence), and/or for storage of the container at a dealer's storage locale (either an indoor warehouse or an outdoor fenced lot), and/or for transportation of the container to a new location. Since the Corporation's current business activity in

New York State is limited to local and intrastate transportation services, this advisory opinion deals solely with transportation of containers within New York State's borders.

A customer may also choose to purchase from the Corporation a damage waiver that limits a customer's liability for damages occurring to the container. Additionally, customers may choose to rent and/or purchase a variety of packing supplies and equipment from the Corporation. Depending on the circumstances, the Corporation may also charge customers for any of the following: container cleaning fees, warehouse access fees, rescheduling/cancellation fees, and container repair fees.

Issues

A. Transportation Charges

1. "Initial Delivery Charge" – The charge for delivery of an empty container to a customer's location. This transaction is taxable, as part of the receipt for the rental of tangible personal property (the storage container). *See Tax Law §1101(b)(3) and 20 NYCRR 526.5(g).*

2. "Move to New Location" – The charge for a local move of a container from a customer's initially-designated location to a different customer-designated location. If the charge is separately stated and bears a reasonable relationship to the number, volume, or weight of the containers and the distance/mileage the containers are being moved, the charge for this transportation is not taxable. This container move is a general transportation service. Such a service is not one of the taxable services enumerated in section 1105(c) of the Tax Law, and therefore is not a service subject to sales tax.

3. & 4. "Move to Warehouse" and "Move from Warehouse to New Location" – The charge for a pick-up of a loaded container from a customer's location and delivery of the container to a dealer's inside or outside storage locale and the charge for the pick-up of a loaded container from a dealer's storage locale and subsequent delivery of the container to a customer-designated location. These fees are taxable, as part of the receipt for the service of storing tangible personal property (the contents of the container belonging to the customer) at the dealer's storage locale. Sales Tax Regulation 526.5(g) provides that the charges by a vendor to its customer for picking up or dropping off of the customer's property upon which the vendor is to perform taxable services are part of the vendor's receipt from the sale of the service subject to tax. Therefore, the provision of moving the storage container is part of the same taxable transaction when provided in conjunction with the storage of the tangible personal property inside the container. *See Tax Law §1105(c)(4) and 20 NYCRR 526.5(g).*

5. "Final Pick-Up Charge" – The charge for the pick-up of an empty container from a customer location. This transaction is taxable, as part of the receipt for the rental of tangible personal property (the storage container). *See Tax Law §1101(b)(3) and 20 NYCRR 526.5(g).*

6. "Additional Stop Charge" – The fee charged when a customer chooses to have a container delivered to multiple customer-designated locations, one stop at a time. Assuming the move does not involve a move to a dealer's warehouse location, charges for this purely transportation-related transaction, if separately stated, are not taxable, since that transaction would involve solely the provision of a general transportation service that is not enumerated in section 1105(c) of the Tax Law as a service subject to sales tax.

7. “Non-Paved Surface Fee – Initial Delivery/Final Pick-Up” - The fee that is charged because a customer has requested that an empty container be placed on and/or removed from a non-paved surface in connection with initial delivery or final pick up. This transaction is taxable, as part of the receipt for the rental of tangible personal property (the storage container). *See Tax Law §1101(b)(3) and 20 NYCRR 526.5(g).*

8. “Non-Paved Surface Fee – Transportation” - The fee that is charged because a customer has requested that an empty container be placed on, and/or removed from, a non-paved surface in connection with transportation of a loaded container from one customer-designated location to another. Assuming the move does not involve a stop at a dealer’s warehouse, charges for this purely transportation-related transaction, if separately stated, are not taxable, since that transaction would involve solely the provision of a general transportation service that is not enumerated in section 1105(c) of the Tax Law as a service subject to sales tax.

B. Rental and Storage Charges

1. “Monthly Rental of Container” – The basic charge for the rental of the container by the customer; does not include storage at a dealer storage locale; rather, it assumes that the container will be stored at a customer location. This charge is taxable under Tax Law §1105(a), as a charge for the rental of tangible personal property (the storage container).

2-3. “Monthly Storage Outside Warehouse” and “Monthly Storage Inside Warehouse” – The incremental addition to the base monthly rental fee for storage of the container at the dealer’s storage location (outside or inside). This charge is taxable under Tax Law §1105(c)(4), as the service of storing tangible personal property (the customer’s property within the container).

4. “Monthly Damage Waiver Rate” – The optional monthly charge that provides a customer a waiver of liability for certain damage that may occur to the container while it is being rented by the customer. This charge is not taxable, if separately stated on the bill given to the customer. This separately stated charge is for neither a sale of tangible personal property nor a service enumerated by Tax Law §1105(c). The waiver is considered to be, in substance, a form of insurance. *See Alamo Rent A Car, Inc., TSB-A-91(33)S and ELRAC, Inc., TSB-A-03(26)S.*

5. “Container Cleaning Charge” - A contingent charge billed to the customer if the customer fails to properly clean out the container after use. This charge is not taxable, assuming that the payment by the customer reimburses the Corporation for its purchases of cleaning services to the tangible personal property the Corporation has rented. The contingent charges are considered purchases made by the Corporation for resale purposes. *See Alamo Rent A Car, Inc., supra.*

6. “Warehouse Access Fee” – The container handling charge that will be imposed if a customer needs to access their belongings while the container is in storage at the dealer’s storage facility. This charge is taxable as part of the receipt for the storage of the customer’s tangible personal property under Tax Law §1105(c)(4). Providing access to the storage container is part of the same taxable transaction when provided in conjunction with the storage of the customer’s property inside the container.

7. “Reschedule/Cancellation Fee” – The fee that is charged when a customer changes or cancels the delivery or pick-up date for a container after the driver has already been dispatched. This charge is taxable,

as part of the receipts of the rental of tangible personal property. This is consistent with our interpretation of §§1105(a) and 1101(b)(5) of the Tax Law in connection with a lease of equipment by a contractor. Thus, 20 NYCRR 541.9(c)(1)(c) provides that “[i]f a contractor [lessee] cancels a lease on equipment and the lessor charges a cancellation fee, such fee is included as a part of the total receipts upon which the tax is based.”

8. “Container Repair Service” – The fee for repair services that a customer must pay when a container is damaged while being rented by the customer and the damage is not covered by a damage waiver. This charge is not taxable, assuming that the payments by the customer reimburse the Corporation for its purchases of repairs to the tangible personal property the Corporation has rented. The repair charges are considered purchases made by the Corporation for resale purposes. *See Alamo Rent A Car, Inc., supra.*

C. Moving Supplies and Equipment

1. “Miscellaneous Supplies for Sale” – The sale of various straps, locks, pads and other moving equipment that are sold through the Corporation’s central call center, processed by a third party vendor, and shipped directly to the customer. These charges are taxable under Tax Law §1105(a), as the sale of tangible personal property.

2. “Dollies and Pads for Rent” – The rental of dollies and pads by the Corporation or the Corporation’s dealer to a customer for a limited period of time. These receipts are taxable under Tax Law §1105(a), as receipts for the rental of tangible personal property.

DATED: November 19, 2008

/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.