

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

TSB-A-92 (9)S
Sales Tax
February 19, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911211C

On December 11, 1991, a Petition for Advisory Opinion was received from Salvage Management, Inc., 522 Trolley Boulevard, Rochester, New York 14606.

The issue raised by Petitioner, Salvage Management, Inc., is whether Petitioner must pay sales tax to automobile dealers and body shops for storage and towing charges on automobiles to be resold on behalf of insurance companies at dealer wholesale auctions.

Petitioner is retained by insurance companies to act as broker to tow vehicles, which they have become the owners of, from automobile dealers and body shops to dealer wholesale auctions. Before dealers and body shops will release the automobiles to Petitioner, Petitioner must pay all storage and towing charges owed on the automobiles. At the auction, the automobiles are sold to wholesale automobile dealers who purchase the automobiles for resale. Petitioner subtracts from proceeds of the sales the expenses it incurs, and sends checks for the balances to the insurance companies.

Section 1105(c)(3) of the Tax Law imposes sales tax on the servicing of tangible personal property not held for sale in the regular course of business.

Section 1105(c)(6) of the Tax Law, effective June 1, 1990, imposes sales tax on the parking, garaging or storing of motor vehicles not held for sale in the regular course of business:

Section 1105(c)(4) of the Tax Law, however, imposes sales tax on storage charges as follows:

(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. (emphasis added)

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

Reg. Sec. 527.6. Storage of tangible personal property.--(Tax Law, Sec. 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.

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(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. (emphasis added)

Section 532.4(d) of the Sales and Use Tax Regulations provides, in part, as follows:

(d) Resale certificate. (1) A resale certificate is used to claim exemption from tax on purchases of tangible personal property or services which will be resold or transferred to a customer when the:

(i) tangible personal property is for resale as such or as a physical component part of tangible personal property;

Accordingly, pursuant to Sections 1105(c)(3), 1105(c)(4) and 1105(c)(6) of the Tax Law and Section 527.6 of the Sales and Use Tax Regulations since the automobiles towed and stored by the dealers and body shops will be sold for resale at dealer wholesale auctions by Petitioner on behalf of insurance companies in the regular course of their business, the charges paid by Petitioner for storage and towing will not be subject to sales tax, provided, however, Petitioner presents the dealers and body shops with a properly completed resale certificate pursuant to Section 532.4(d) of the Sales and Use Tax Regulations. In addition, the insurance companies must present Petitioner with a properly completed resale certificate since Petitioner is performing the transactions on their behalf.

DATED: February 19, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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