

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

TSB-A-82(51)S
Sales Tax
December 31, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820107A

On January 7, 1982 a Petition for Advisory Opinion was received from Pohlman Foundry Company, Inc., 205 Baitz Avenue, Buffalo, New York 14206.

The issue raised is whether Petitioner's charges to its customers for pattern storage are subject to tax under section 1105(c)(4) of the Tax Law.

Petitioner is in the jobbing foundry business. Petitioner's customers provide their own pattern equipment and corebox equipment, which Petitioner uses to make finished jobbing castings. Petitioner formerly provided for the storage of its customers' pattern equipment at the foundry facility itself. Approximately five years ago, however, Petitioner acquired a building adjacent to its foundry facility for use as a pattern storage warehouse. At that time Petitioner contacted its customers and gave them the option of either renting a given space in Petitioner's pattern storage warehouse, having the pattern and corebox equipment returned or having Petitioner destroy the pattern equipment where it was determined to be obsolete.

The pattern storage building has its own entrance and exit areas. Petitioner's customers have access to the building, for both delivery and removal of their own pattern equipment. During daytime hours Petitioner's customers have unlimited access to the pattern storage warehouses. During the night, however, the customers are required to give prior notice to Petitioner in order to gain access to the pattern storage warehouse.

There is no prescribed amount of pattern equipment or coreboxes that must be placed within a customer's storage area. The pattern equipment or coreboxes must be retained within the specific area assigned to the customer. Each customer may use only the area specifically assigned to him. A customer may store other items in his area, provided the items being stored comply with the insurance codes applicable to the facility. Customers may provide their own racks or holding devices for use in storing their equipment. The fee charged by Petitioner is a flat amount, and is not based on the number or nature of the items stored.

Petitioner has full access to the pattern storage area and, pursuant to authorization by a customer, may withdraw patterns from a customer's assigned space for use in production.

Section 1105(c)(4) of the Tax Law imposes a tax on receipts from the following service:

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

"(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 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." 20 NYCRR 527.6.

Accordingly, upon a consideration of the facts presented by Petitioner, and in light of the above-quoted statutory and regulation provisions, it is hereby determined that Petitioner supplies the service of storage to its customers and that its charges therefor are subject to tax under section 1105(c)(4) of the Tax Law.

DATED: December 23, 1982

s/FRANK J. PUCCIA
Director
Technical Services Bureau