

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

TSB-A-85(10)S
Sales Tax
May 20, 1985

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840201A

On February 1, 1984 a Petition for Advisory Opinion was received from Genesee Marina, Inc. d/b/a Riverview Yacht Basin, 18 Petten Street Extension, Rochester, New York 14612.

The issue raised is whether space rented by Petitioner for off-season storage of motor boats and sail boats is subject to tax as storage or excluded from tax as the rental of real property.

Petitioner is the owner of a marina which is primarily engaged in the sale and repair of boats. Petitioner also provides dock space for boats during the boating season and land storage space for boats during the off-season.

Petitioner submitted a copy of its space rental agreement with its Petition. The space rental agreement provides that the rental of space is at the owner's risk and that a bailment is not created.

Petitioner stated that the space rented is a designated area on its real property and that, during the time the space rental agreement is in effect, the boat owner has unlimited ingress and egress to the rental space.

Section 1105(c)(4) of the Tax Law imposes a tax on the services of storing all tangible personal property not held for sale in the regular course of business.

The term "storage" is defined in the Sales and Use Tax Regulations as ". . . the provision of a place for the safekeeping of goods, without regard to the manner of payment or length of time of the service. "20 NYCRR 527.6(a)

Such Regulations provide further that:

"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. . ." (Emphasis added)

"Example 1: A person moors his boat in a slip, at a marina, during the summer months, and places it in storage on land during the winter months. The charges for mooring are not taxable; the charges for storage are taxable." 20 NYCRR 527.6(b)(2)

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In the instant case, Petitioner's space rental agreement is not distinguished from the provision of storage space since the contract does not specify "a certain amount of footage in a specific location." The provision of storage space by Petitioner is therefore subject to tax.

DATED: April 30, 1985

FRANK J. PUCCIA
Director
Technical Services Bureau

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