

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AMERICAN LOCKER COMPANY, INC.

For a Redetermination of a Deficiency or
a Refund of Sales and Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the (Year(s) 8/1/65 - 2/28/66

One copy
AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Margaret Wood, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of April, 1970, she served the within Notice of ~~Decision~~ (or Determination) by (certified) mail upon Robert M. Entwisle, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Robert M. Entwisle, Esq.
Miller, Hay, Entwisle & Duff
3015 Grant Building
Pittsburgh, Pennsylvania 15219
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

30th day of April, 1970.

Frank Wright

Margaret Wood

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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County of Albany

Margaret Wood

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of April , 1970, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon American
Locker Company, Inc. ~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: American Locker Company, Inc.
Jones & Gifford Avenue
Jamestown, New York 14701

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~of~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

30th day of April , 1970

Paul H. Knight

Margaret Wood

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
AMERICAN LOCKER COMPANY, INC.	:	
for Revision of a Determination or	:	DETERMINATION
for Refund of Sales and Use Taxes	:	
under Articles 28 and 29 of the Tax	:	
Law for the periods August 1, 1965	:	
through February 28, 1966	:	

AMERICAN LOCKER COMPANY, INC., a vendor registered under Article 28 of the Tax Law, has filed an application for revision of a determination or for refund of sales and use taxes for the periods August 1, 1965 through February 28, 1966.

A formal hearing was held in the offices of the State Tax Commission in the city of Buffalo on August 2 and 3, 1967. The vendor appeared through Miller, Hay, Entwisle & Duff, Esqs., (Robert M. Entwisle, Esq. and Charles Watkins, Esq. of counsel).

FINDINGS OF FACT:

1. The vendor, American Locker Company, Inc., filed sales and use tax returns for the periods August 1, 1965 through February 28, 1966. Gross sales are reported, but taxable sales or use tax were not reported in these periods.

2. On October 25, 1966, the Sales Tax Bureau issued a notice of determination and demand, numbered 90,750,565 against the vendor for the periods August 1, 1965 through February 28, 1966 in the amount of \$25,652.94, plus statutory penalties and interest, consisting of the following:

A. Sales taxes due on locker storage (including applicable local rates)	\$19,389.85
B. Use tax on contract labor performed by A. V. M. Corporation for vendor	4,902.93
C. Use tax on materials used to repair locks and lockers owned by the vendor	881.59
D. Equipment and dies purchased by vendor and used to manufacture locks and lockers used by the vendor	<u>478.57</u>

3. The Sales Tax Bureau has stipulated to a correction of the determination that reduces the use tax on contract labor (item 2B, above) by the amount of \$1,383.39.

4. The vendor objects only to the imposition of the sales tax upon receipts from locker storage, (item 2A), and timely filed an application for a hearing.

5. The vendor manufactures cabinets, each consisting of several individual coin-controlled lockers. The vendor places and maintains its equipment in space provided in transportation terminals by the property owners. The locking device is activated by depositing coins in the slot of the mechanism. The patron retains a key which permits the patron to re-enter the locker and remove his property within twenty-four hours. Under lease agreements, the receipts are divided between the vendor and the property owner under an agreed formula, based on volume. The cabinets remain the property of the vendor.

DETERMINATION

I. The vendor, American Locker Company, Inc., is principally engaged in the business activity of storing tangible personal property not held for sale in the regular course of business, and the receipts from these services are taxable sales of services within the meaning and intent of Article 28, Section 1105(c)(4), of the Tax Law.

II. The determination issued under notice, numbered 90,750,565 as amended by stipulation of the Sales Tax Bureau, (item 3 above), is correct and is sustained.

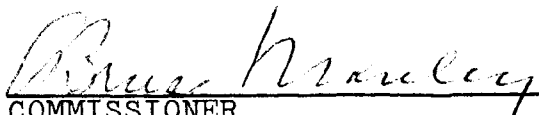
III. The vendor's application for revision of the determination or for refund is denied.

DATED: Albany, New York
April 29, 1970

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



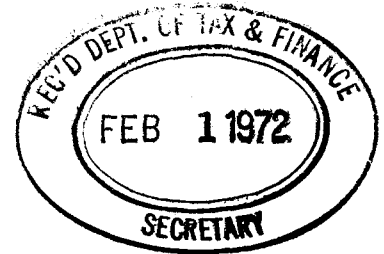
COMMISSIONER

BUREAU OF LAW
MEMORANDUM

TO

FROM : State Tax Commission

SUBJECT: Saul Heckelman, Director

American Locker Company, Inc. v.
State Tax Commission

Enclosed herein please find copy of the decision of the Appellate Division unanimously sustaining the determination of the State Tax Commission which assessed sales taxes against the petitioner, American Locker Company, Inc.

The taxes were imposed pursuant to paragraph (4) of subdivision (c) of section 1105 of the Tax Law, which provides for the taxation of the receipts from every sale, except for resale, of the services of:

"(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."

American Locker Company, Inc. is the owner of coin-controlled lockers in which baggage and other articles are stored by the public. To obtain the use of a locker, the patron must deposit a coin. The Court held that that service was a storage service despite the limited duration of such storage, and, further, that under the various contractual relationships between petitioner and the various operators on whose premises the lockers were placed, the petitioner, rather than the operators, was the vendor. In view of this, the Court held that American Locker Company, Inc. was responsible for the collection of the sales tax on that service and was liable for payment of the sales tax payable for that service.

As yet, we do not know whether American Locker will request leave to appeal.

DirectorMS:ejf
Enc.

January 31, 1972

cc: Fred W. Tierney, Director
Edward Rook, Secretary

#17832

STATE OF NEW YORK
APPELLATE DIVISION

SUPREME COURT
THIRD DEPARTMENT

In the Matter of AMERICAN LOCKER COMPANY, INC.,	}	
	}	
	}	Petitioner,
	}	
-against-	}	
	}	
NORMAN GALLMAN et al., Constituting the State	}	
Tax Commission,	}	
	}	
	}	Respondents.

Argued, December 13, 1971.

Before:

HON. J. CLARENCE HERLIHY,	
	Presiding Justice,
HON. LOUIS M. GREENBLOTT,	
HON. LAWRENCE H. COOKE,	
HON. MICHAEL E. SWEENEY,	
HON. RICHARD D. SIMONS,	
	Associate Justices.

PROCEEDING under CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Third Judicial Department by order of the Supreme Court at Special Term, entered in Albany County) to review a determination of the State Tax Commission.

CRAVATH, SWAINE & MOORE (Ralph L. McAfee, of counsel) for petitioner, One Chase Manhattan Plaza, New York, New York, 10005.

LOUIS J. LEFKOWITZ, Attorney General (Ruth Kessler Toch and Robert W. Bush, of counsel) for respondents, The Capitol, Albany, New York 12224.

OPINION FOR CONFIRMANCE

Supreme Court—Appellate Division
Third Judicial Department

M. B.

January 20, 1972.

17832

In the Matter of AMERICAN LOCKER COMPANY, INC.,
Petitioner,

v.

NORMAN GALLMAN et al., Constituting the State
Tax Commission, Respondents.

Determination confirmed, with costs, and petition dismissed.

Opinion per GREENBLOTT, J.

HERLIHY, P. J., COOKE, SWEENEY and SIMONS, JJ., concur.

GREENBLOTT, J.

This is a proceeding under CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Third Judicial Department by order of the Supreme Court at Special Term, entered in Albany County) to review a determination of the State Tax Commission.

Petitioner is the owner of patented, coin-controlled lockers in which baggage and other articles of personal property are stored by the public. The lockers, which are manufactured to comprise cabinet units of several permanently attached lockers on top of each other, are placed primarily in air, bus and railroad terminals in accordance with various contracts with the owners and lessees of the premises on which the lockers are to be installed. The contracts, which are drawn as leases in bulk, are typically for periods of five years and obligate the owners or lessees (hereinafter referred to as operators) to make the lockers available for the storage of baggage.

The use of the locker is quite simple. After selecting an available locker, each of which has its key in the lock, the patron places the item to be stored inside, inserts, depending upon the size of the locker, a dime, two dimes or a quarter into the indicated slot, closes the door and turns and removes the key, thereby locking the door. The key, which bears a number corresponding to the number on the locker door, permits the patron to reopen the locker and retrieve his belongings at any time within 24 hours. Once reopened, the locker may only be locked again upon payment of the required fee, even if the 24-hour period has not elapsed. If a locker is occupied for more than 24 hours, the patron's belongings are removed by an employee of the operator and may be retrieved only upon payment of an overtime charge.

In addition to removing the belongings and collecting the charges in an overtime situation, the operator cleans the lockers and handles emergencies, customer complaints and lost key problems. It also collects the receipts from the lockers, after which a certain percentage of the gross revenues is paid to petitioner (there is no requirement that a special account be used). In sum, the operator handles the daily operation of the lockers. Petitioner, being responsible for the functioning of the lockers, indemnifies the operators if any losses occur. As to tax liability, the various contracts, except the Embarkation Casual Center Fund contract, provide that any taxes (except personal property taxes) levied or assessed on the conduct, maintenance, operation, gross receipts or revenue of the locker service are borne by the petitioner and each operator in the same percentage as the gross revenues are shared.

A notice of determination and demand dated October 25, 1966 was issued against petitioner for sales tax due on all revenues flowing through the lockers (not just the percentage petitioner received) for the period from August 1, 1965 through February 28, 1966. Although petitioner has filed sales and use tax returns for this period, no taxable sales were reported. Petitioner, under protest, paid the \$29,785.67 claimed due (tax, penalty and interest charges). An informal hearing was held, followed by a formal hearing in August, 1967. By a determination dated April 29, 1970, the Tax Commissioner determined that petitioner, as the vendor, was principally engaged in the business of storing tangible personal property not held for sale in the regular course of business and that the receipts from these services were taxable sales of services within the meaning and intent of paragraph (4) of subdivision (c) of section 1105 of article 23 of the Tax Law.

Petitioner contends: (1) that it is not engaged in the "storage" of tangible property; (2) that it is not involved in the "rental of safe deposit boxes or similar space"; (3) that to impose the sales tax upon the use of petitioner's lockers would constitute an unconstitutional interference with interstate commerce; (4) that its revenues are derived from sales for resale and are therefore exempt; (5) that those revenues derived from sales by governmental and charitable organizations are exempt from the sales tax; and (6) that even if a tax should have been imposed and collected, it was not the vendor and is therefore not liable for such tax.

Section 1105 (subd. [c], par. [4]) provides that a tax is imposed and shall be paid upon the "receipts from every sale, except for resale", of 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". It is immediately observed that if the rental of space is not construed as being storage, the receipts would not be taxable (unless construed as being rental of safe deposit boxes or similar space). Therefore, petitioner first contends that the rental of space here is "checking", which should be distinguished from "storing". We see no valid distinction between the two for the purpose of the section, and the cases cited by petitioner (e.g., Matter of Monument Garage Corp. v. Levy, 266 N.Y. 339; Kelemen v. American Locker Co., Inc. 182 Misc. 1058) are inapposite. The term "storing" within the meaning of section 1105 (subd. [c], par. [4]) does not necessarily connote such duration as to preclude its application here, and there is no reason to limit its application to long-term custody. Mindful of the requirement that the provision here should be strictly construed in favor of the taxpayer (see Bathrick Enterprises v. Murphy, 27 A D 2d 215, aff'd. 23 N Y 2d 664), it is

our opinion that when a patron deposits his tangible personal property within one of petitioner's lockers, he is storing his property, albeit such storage is only for a limited duration. That such a distinction is more illusory than real is apparent from the language of the cases discussing petitioner's lockers (compare American Locker Co., Inc. v. City of New York, 308 N.Y. 264, 266 and Kelemen v. American Locker Co., supra, with Bathrick Enterprises v. Murphy, supra). We are convinced that within the meaning of the section involved, the short-term "checking" of baggage here present is storage of tangible personal property.

Having reached this conclusion, it is unnecessary to consider petitioner's second contention, although we note that respondent does not contend that there is here a rental of safe deposit boxes or other similar space.

There is no merit to petitioner's third argument. A sales tax on the use of locker storage facilities does not amount to an unconstitutional burden on interstate commerce and freedom to travel. Nor is there any merit to petitioner's contention that the contractual agreements between petitioner and the various operators create sales for resale.

Petitioner's fifth contention must also be rejected. As to the governmental agencies, section 1101 (subd. [b], par. [3] [i] [E]) of the Tax Law, in order not to give State and local governments an unfair advantage in the market place, specifically provides that the State of New York, its agencies and political subdivisions are to be considered vendors when such an entity sells services or property of a kind ordinarily sold by a private person (see also Tax Law, § 1116, subd. [a], par. [1]). As for any charitable organization upon whose

premises the lockers are located, there has been no showing that an exemption under section 1116 of the Tax Law would be authorized.*

It is the vendor of the service involved who is responsible for the collection of the sales tax and who is liable for the tax imposed (Tax Law, §§ 1131, subd. [1], 1132, 1133). Therefore, having determined that the receipts received for the storage of baggage and other tangible property in petitioner's lockers are subject to the sales tax imposed by section 1105 of the Tax Law, we must determine whether petitioner is the vendor and therefore liable for the collection and payment of the tax. The statute defines a vendor as including one who makes "sales of tangible personal property or services" (§ 1101, subd. [b], par. [8] [i] [A]) or one "who solicits business either by employees, independent contractors, agents or other representatives * * * and by reason thereof makes sales * * * of tangible personal property or services" (§ 1101, subd. [b], par. [8] [i] [C]). The contractual relationships established between petitioner and the various operators are of the type encompassed by the above definition and petitioner, rather than the operators, is the vendor. It is unnecessary for us to further define the relationship established in the present record.

The determination should be confirmed, with costs, and the petition dismissed.

* We additionally note that any exemption granted by section 1116 to a government agency or charitable organization is granted only where the sale is "by or to" such agency or organization. This was not the case here since we have determined that petitioner is the vendor (see discussion, infra). Petitioner, as the vendor, cannot claim any such exemption.