



Charges for Storage Services and Repair Services to Cargo Containers and Chassis Performed at a Marine Terminal Facility

TAM – 2014-1 – Issued June 16, 2014

Tax: Sales and Use Tax

This TAM is issued to clarify the application of N.J.S.A. 54:32B-8.12 in light of a recent Tax Court decision on charges for storage services and repair services to cargo containers and chassis performed at a marine terminal facility.

The Sales and Use Tax Act provides the following exemption from Sales Tax:

Receipts from sales or charges for repairs, alterations or conversion of commercial ships or any component thereof including cargo containers of any type whatsoever, barges and other vessels of 50-ton burden or over, primarily engaged in interstate or foreign commerce, machinery, apparatus and equipment for use at a marine terminal facility in loading, unloading and handling cargo carried by those commercial ships, barges and other vessels, and storage and other services rendered with respect to such loading, unloading and handling cargo at a marine terminal facility, ferryboats that are primarily engaged in the transportation of passengers during peak hours of commutation, or other vessels, regardless of tonnage, primarily engaged in commercial fishing or shell fishing, including equipment necessary for harvesting fish, shellfish and other crustaceans and aquatic organisms, or other vessels primarily engaged in commercial party boat (head boat) sport fishing and subject to annual inspection by the United States Coast Guard, and of governmentally-owned ships, barges and other vessels and property used by or purchased for the use of such vessels, machinery, apparatus and equipment for fuel, provisions, supplies, maintenance and repairs (other than articles purchased for the original equipping of a new ship) are exempt from the tax imposed under the Sales and Use Tax Act.

N.J.S.A. 54:32B-8.12 (emphasis added).

MARINE TERMINAL FACILITY

In *Ironbound Intermodal Industries, Inc. v. Director*, (012089-2008, July 19, 2013), the Tax Court reviewed the applicability of the exemption in N.J.S.A. 54:32B-8.12 to container storage services and chassis repair services. The Court referred to the definition of a marine terminal provided by N.J.S.A. 40:68-18, which defines it as "a development consisting of one or more piers, wharves, docks, bulkheads, slips, basins, vehicular roadways, railroad connections, side tracks, sidings and other buildings, structures, facilities or improvements, necessary or convenient to the accommodation of steamships or other vessels and their cargos and passengers." The Court determined that the statutory use of the term "marine terminal facility" includes Ironbound's off-site container depots, since they are "necessary or convenient to the accommodation of steamships or other vessels and their cargos."

Having concluded that Ironbound is a marine terminal facility, the Court then determined the following:

STORAGE SERVICES

The law imposes Sales Tax on charges for storage services, other than storage of inventory. N.J.S.A. 54:32B-3(b)(3). However, storage services for cargo containers and chassis that are provided at a marine terminal facility as defined above are specifically exempt. The storage of cargo containers and chassis at a location other than at a marine terminal facility is subject to Sales Tax.

REPAIR SERVICES

Charges for repairs to tangible personal property are subject to Sales Tax. N.J.S.A. 54:32B-3(b)(2). However, the exemption in N.J.S.A. 54:32B-8.12 applies to repairs to “commercial ships or any component thereof including cargo containers.” Thus, charges for repair services to cargo containers are exempt. N.J.S.A. 54:32B-8.12 also exempts charges for “other services rendered with respect to such loading, unloading and handling cargo at a marine terminal facility.” According to the Court decision, this includes charges for repair services to chassis which are used to load, unload, and handle cargo, when such services are performed at a marine terminal facility.

REPAIR PARTS AND REPLACEMENTS PARTS

Charges for parts are subject to sales tax. N.J.S.A. 54:32B-3(a). However, N.J.S.A. 54:32B-8.12 exempts “property used by or purchased for the use of such vessels”; this includes repair parts and replacement parts for cargo containers because cargo containers are component parts of commercial ships. Repair parts and replacement parts for chassis, which are treated as motor vehicles, are not exempt under 8.12. Such parts may be exempt under N.J.S.A. 54:32B-8.43, which provides an exemption for commercial trucks and repair parts and replacement parts.

Note: A Technical Advisory Memorandum (“TAM”) is an informational statement of the law, regulations, or Division policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions or changes in Division policies could affect the validity of the information presented in a TAM.