

Summary of Recently Enacted Sales and Use Tax Legislation

This memorandum summarizes some recent amendments to the Tax Law regarding State and local sales and compensating use taxes.

Sales and use tax on vessels based on residence of purchaser

Effective March 1, 2001, the Tax Law was amended to exempt from State and local sales and use taxes receipts from sales of vessels to out-of-state purchasers who have taken physical possession of such vessels in New York State, provided that:

- 1) the purchaser, at the time of taking delivery is not a resident of New York State, has no permanent place of abode in New York State and is not engaged in carrying on in New York State any employment, trade, business or profession in which the vessel will be used in New York State;
- 2) the vendor of the vessel does not assign to the vessel a New York registration number or issue to the purchaser a temporary registration for the vessel pursuant to section 2255 of the Vehicle and Traffic Law or other like registration or temporary certificate of registration;
- 3) the purchaser does not register the vessel in New York State prior to registering the vessel in another state or jurisdiction; and
- 4) prior to taking delivery the purchaser furnishes to the vendor a properly completed *Certificate of Nonresidency of New York State and/or Local Taxing Jurisdiction* (Form [DTF-820](#)).

As a result of this amendment the sales and use treatment of vessels is similar to the sales and use tax treatment of motor vehicles. That is, sales or use tax is collected by the vendor based upon the purchaser's place of residence, not on the place of delivery.

For purposes of these amendments, the term "vessel" shall include a vessel as defined in section 2250 of the Vehicle and Traffic Law, including any inboard or outboard motor and any trailer, as defined in section 156 of the Vehicle and Traffic Law, sold with the vessel for use with the vessel. (Vessels also include those vessels commonly referred to as "personal watercraft.") Such term does **not** include a vessel weighing 200 pounds or less, inclusive of any mast and sail or other rigging, which is not equipped with a motor and which is exempt from registration under section 2252(1)(g) of the Vehicle and Traffic Law.

(Ch. 481, L. 2000, Tax Law sections 1117 and 1214.) Effective March 1, 2001.

Definition of promotional materials and exemption from sales and use tax expanded

The Tax Law was amended to expand the definition of promotional materials and to clarify the scope of the exemption from State and local sales and use taxes for promotional materials. These amendments were enacted on August 16, 2000, and are deemed to have been in effect on and after March 1, 1997.

The definition of promotional materials was amended to include “prospectuses.” It was also amended to include paper or ink furnished to a printer for use in providing the services of producing, printing or imprinting promotional materials or in producing, printing or imprinting promotional materials, where the paper and ink become a physical component part of the promotional materials and the printer sells the services or promotional materials to the person who furnished the paper and ink to the printer.

The exemption from sales and use tax was expanded to include receipts from the sales of mechanicals, layouts, artwork, photographs, color separations and like property where the property is purchased, manufactured, processed or assembled by a person who furnishes the property to a printer and the printer uses the property directly and predominantly in the production of exempt promotional materials for sale or in performing exempt services for sale, by the printer to the person who furnished the property to the printer.

(Ch. 220, L. 2000, became law August 16, 2000, effective immediately and is deemed to have been in full force and effect on and after March 1, 1997. See Tax Law sections 1101(b)(12) and 1115(n)(7). See also TSB-M-97(6)S, *Expanded Sales and Compensating Use Tax Exemption for Promotional Materials.*)

Sales and use tax exemption for certain food and drink sold by a senior citizen independent housing community

An amendment to the Tax Law, effective December 1, 2000, provides an exemption from State and local sales and use taxes on receipts from sales made by a senior citizen independent housing community of food or drink (other than beer, wine or other alcoholic beverages) sold for consumption on the premises of the community to the residents of the community and guests of the residents. The exemption applies only where the food and drink is served to the residents and their guests either at a dining facility at the community which is not open to the public or in the residents’ rooms.

For purposes of this exemption, the term “senior citizen” means a person at least 55 years of age; and the term “senior citizen independent housing community” means a residential facility with or without additional facilities such as recreational facilities, which is designed for senior citizens, the residents of which are senior citizens, spouses of the senior citizens or any other person, not necessarily related, who has resided with a senior citizen for at least six months, and persons hired to provide live-in long term care to a resident and who are actually providing such care to the resident for compensation.

This exemption does not apply where someone other than the community (such as a caterer) sells food or drink on the premises of the community to residents or their guests. Nor does the exemption apply to food or drink sold through vending machines located on the premises of the community. Likewise, this exemption does not apply to food or drink sold or served at a hotel, motel, rooming house or other similar establishment or at a restaurant, tavern or other similar establishment. See TSB-M-97(12)S, *Summary of Sales Tax Changes - 1997 Budget Legislation*, and TSB-M-00(6)S, *Summary of the 2000 Sales and Compensating Use Tax Budget Legislation*, for information on sales of food or drink made through vending machines.

Where the community purchases prepared food or drink from a caterer or other person and resells the food or drink to its residents or their guests, the community must pay sales tax to the caterer or other person at the time of purchase. No tax is required to be collected by the community when the food or drink is resold to the residents or their guests; and the community would be eligible for a credit or refund of the sales tax it paid on the food or drink that it resold. See Sales Tax Regulations section 527.8(i).

(Ch. 403, L. 2000, Tax Law section 1115(w).) Effective December 1, 2000.