



## **Summary of Budget Bill**

### **Sales and Use Tax Changes Enacted in 2012**

This memorandum contains a summary of sales and use tax changes that were enacted as part of the 2012-2013 New York State budget (Chapter 59 of the Laws of 2012). The following legislative changes are summarized in this memo:

- [Amendments to facilitate compliance by room remarketers](#)
- [Changes to the classification of diesel motor fuel](#)
- [Electronic filing and electronic payment mandate changes](#)
- [Extension of alternative fuel tax exemptions](#)
- [Extension of the requirement to deposit sales tax into a separate bank account](#)
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#### **Amendments to facilitate compliance by room remarketers**

The Tax Law was amended to make it easier for room remarketers to comply with their responsibilities under the sales tax law. As a result of the 2010 budget legislation, room remarketers are required to collect state and local sales tax from their customers. See [TSB-M-10\(10\)S](#), *Amendments Affecting the Application of Sales Tax to Rent Received for Hotel Occupancy by Room Remarketers*.

The new provisions, effective for occupancies beginning on or after September 1, 2012, are as follows:

- Room remarketers may now use a revised method of computing sales tax on rent for hotel occupancy when they sell hotel occupancy together with other property and services (bundled sales).
- Room remarketers will report and pay sales tax due in the sales tax period in which the occupancy ends, rather than the sales tax period during which they collected the charge from the customer.
- Any receipt showing the amount of sales tax due must be given to the customer no later than when the customer completes the occupancy.
- When claiming a credit or refund of the sales tax paid to the hotel, if the remarketer is unable to obtain the hotel's *Certificate of Authority* number, it may substitute certain

other identifying information, such as the hotel operator's name, its business address, the hotel's address (where occupancy took place), and the hotel's phone number.

These amendments are explained in more detail in [TSB-M-12\(8\)S](#), *2012 Budget Legislation Affecting the Sales Tax Obligations of Hotel Room Remarketers*.

(Tax Law sections 1111(r), 1119(e), sections 11-2502(a)(4)(i), 11-2502(a)(5), and 11-2502(f) of the Administrative Code of the City of New York)

### **Changes to the classification of diesel motor fuel**

The Tax Law was amended to make technical changes to the classification of certain types of diesel motor fuel. The amendment deletes crude oil from the definition of diesel motor fuel in the motor fuel excise tax (Article 12-A), the petroleum business tax (Article 13-A) and the State and local sales and use taxes (Articles 28 and 29). It also removes the exemption for crude oil from the petroleum business tax (Article 13-A) as crude oil is no longer subject to tax.

Under the new law, a distributor of diesel motor fuel is allowed to sell undyed qualified biodiesel to another distributor of diesel motor fuel without excise tax, petroleum business tax, and prepaid sales tax. In addition, the amendment removes the restriction that non-highway diesel motor fuel cannot be sold without prepaid sales tax if the fuel was previously subject to tax.

The amendments take effect on June 1, 2012, and apply to certain sales and uses occurring on and after that date. For more information about these changes, see [TSB-M-12\(2\)M, \(6\)S](#), *Technical Amendments Related to Diesel Motor Fuel*.

### **Electronic filing and electronic payment mandate changes**

The sunset date for the revised electronic filing and electronic payment mandate provisions for tax return preparers established under section 23 of Part U of Chapter 61 of the Laws of 2011 has been extended through 2013. The e-file mandate rules that were in effect before the revised provisions established under Chapter 61 of the Laws of 2011 will be restored as of January 1, 2014.

In addition to the extension of the revised mandate, the new law changed several provisions of the revised e-file mandates. These changes are summarized below.

***Tax preparer e-file mandate.*** The e-file mandate threshold has changed for tax preparers who first become subject to the mandate for tax years beginning on or after January 1, 2012, and before January 1, 2014. A tax preparer who prepares tax documents for more than ten different taxpayers during any calendar year, and in a succeeding year prepares one or more authorized returns using tax software, must file all authorized tax documents electronically in that succeeding tax year as well as each year thereafter.

The tax preparer e-file mandate previously was based on the number of authorized tax documents prepared by a tax preparer using tax software. Tax preparers who met the prior e-file mandate requirement by preparing more than five authorized tax documents in a previous year must still electronically file all authorized tax documents in succeeding tax years if they prepare one or more returns using tax software.

***Definition of an authorized tax document.*** The definition of an *authorized tax document* has been changed to **exclude** any return or report that includes one or more tax documents that cannot be filed electronically. This change is effective as of March 30, 2012.

For the most up-to-date information on the e-file mandates for tax preparers, see the Tax Department Web site ([www.tax.ny.gov](http://www.tax.ny.gov)).

(Tax Law sections 29(a)(1) and 29(b)(2))

### **Extension of alternative fuel tax exemptions**

This extension continues the full exemptions for E85, compressed natural gas (CNG) and hydrogen, and the partial exemption for B20, from:

- motor fuel taxes (Article 12-A),
- petroleum business taxes (Article 13-A),
- fuel use taxes (Article 21-A), and
- sales and use taxes (Articles 28 and 29).

The exemption for B20 does not apply to the prepaid sales tax. This amendment extends the exemptions through September 1, 2014. They were due to expire on September 1, 2012.

### **Extension of the requirement to deposit sales tax into a separate bank account**

The sunset date has been extended to December 31, 2013, with respect to the provisions that allow the department to require certain sales tax vendors to deposit the sales tax they collect into a separate account. If a vendor fails to establish a separate account when notified by the department to do so, the department is authorized to require the vendor to file a bond. In addition, the department may revoke or suspend the vendor's *Certificate of Authority* for failure to comply with these requirements.

(Tax Law Sections 1134(a)(4)(A) and 1137(e)(2))

### **Suspension of STAR eligibility for taxpayers with past-due state tax liabilities**

New section 171-y has been added to the Tax Law. This new law authorizes the Tax Department to establish a program to aid in the collection of past-due state tax liabilities by suspending eligibility for STAR (school tax relief) exemptions. In addition, section 425 of the Real Property Tax Law has been amended to allow for this program.

For purposes of the new program, the following definitions apply:

- *State tax liability* means any tax (including but not limited to local sales tax and income tax), surcharge, penalty, interest charge, or fee administered by the Commissioner of Taxation and Finance that is owed by the taxpayer.
- *Past-due state tax liability* or *past-due state tax liabilities* means any state tax liability or liabilities:
  - that have become fixed and final and the taxpayer no longer has any right to administrative or judicial review; and
  - for which the taxpayer has not made a satisfactory payment arrangement.
- *Mistake of fact* is limited to claims that:
  - the individual notified is not the taxpayer who owes the tax; or
  - the past-due state tax liabilities were satisfied; or
  - the department incorrectly found that the taxpayer has failed to comply, more than once within a twelve-month period, with the terms of the installment payment agreement that includes the past-due state tax liabilities.
- *Taxpayer* means the individual responsible for the payment of any past-due state tax liabilities.
- *STAR exemption* means the exemption from real property taxation authorized by section 425 of the Real Property Tax Law.

The new program allows the Tax Department to identify taxpayers whose total past-due state tax liabilities are \$4,500 or more and who own real property (wholly or in part) that is eligible for the STAR exemption. The department will notify these taxpayers that the eligibility for the STAR exemption on their property can be suspended. To avoid the suspension, a taxpayer must respond to the notice by:

- satisfying the past-due state tax liabilities,
- entering into an installment payment agreement with the department to satisfy the past-due state tax liabilities<sup>1</sup>, or
- showing there has been a *mistake of fact* regarding the past-due state tax liabilities.

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<sup>1</sup> If a taxpayer fails to comply with the terms of the installment payment agreement more than once in a twelve month period, the department may immediately notify the assessor to suspend the property's eligibility for the STAR exemption.

A taxpayer will be allowed at least 45 days to respond to the department notification.

If a taxpayer fails to respond by the date specified in the notification, the department is authorized to notify the local assessor to suspend the eligibility for the STAR exemption for the taxpayer's property. If the taxpayer's property is a cooperative apartment or mobile home receiving a STAR exemption, the suspension will only apply to the STAR exemption amount attributable to the cooperative apartment or mobile home owned by the taxpayer.

Once the Tax Department notifies an assessor to suspend the eligibility for the STAR exemption, the property will remain ineligible for the STAR exemption until the department notifies the assessor that the suspension of its eligibility may be lifted.

When a taxpayer's property becomes ineligible for the STAR exemption, the school property tax liability for that property will increase. However, the amount of the property tax increase that is due to the suspension of the STAR exemption will be credited against the taxpayer's past-due state tax liabilities. When the taxpayer's past-due state tax liabilities are satisfied, the department will notify the assessor that the property's ineligibility for the STAR exemption may be lifted. If all other requirements under section 425 of the Real Property Tax Law are met, the STAR exemption will apply to the taxpayer's property for the following school year.

**Note:** An assessor or board of assessment review does not have the authority to consider a challenge to the suspension of eligibility for the STAR exemption due to a past-due state tax liability. The suspension may only be challenged before the Tax Department on the grounds of *mistake of fact*. In addition, a taxpayer will have no right to begin a court action, administrative proceeding, or any other form of legal recourse against the department or an assessor regarding the suspension. However, taxpayers are not prohibited from applying for relief from past-due state tax liabilities under section 654 of the Tax Law (relating to relief from joint and several liability for certain married or formerly married taxpayers) or by filing a petition under the Bankruptcy Code of 1978 (Title 11 of the United States Code).

These provisions will apply to the STAR exemption for the 2013-2014, 2014-2015, and 2015-2016 school years.

(Tax Law section 171-y and Real Property Tax Law section 425)

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.