

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

TSB-M-96(14)S  
Sales Tax  
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**Tax Law Defines Commercial Vessels and Commercial Aircraft**

Statutory changes in the definitions of commercial vessels and commercial aircraft have expanded the current sales and use tax exemptions for commercial vessels and aircraft, effective December 1, 1996. The expanded exemptions now also include vessels and aircraft that transport, in qualifying commerce, tangible personal property in the conduct of the business of the purchaser of the vessels or aircraft. (Purchaser includes, for example, a buyer, renter or lessee of the vessel or aircraft.) The exemption covers certain purchases of tangible personal property necessary to operate the exempt vessels and aircraft, and also exempts maintenance and repair services to the exempt vessels or aircraft, and fuel used by the exempt vessels and aircraft.

Previously, only vessels and aircraft used by the purchaser primarily (at least 50% of the time) in the transportation for hire of other persons or their property qualified for the exemption. Thus, self-use of a vessel or aircraft to transport one's own property was not a qualifying use.

**Commercial Vessels**

The expanded definition of a commercial vessel is a vessel used primarily:

- to transport persons or property, for hire;
- by the purchaser of the vessel to transport the purchaser's tangible personal property in the conduct of the purchaser's business; or
- for both of the above purposes.

To qualify, a commercial vessel must be primarily engaged in interstate or foreign commerce. *Interstate or foreign commerce* means the transportation of persons or property between states or countries.

In addition to exempting the sale of the vessel, the exemption also applies to property used by or purchased for the use of the commercial vessel for:

- fuel
- provisions
- supplies
- maintenance and repairs

Also exempt are the services of maintaining, servicing and repairing the vessel, and the above exempt property.

The expanded exemption does not, however, apply to property purchased for or used in the original equipping of a new commercial vessel or to the service of installing this property.

Marine cargo containers which are constructed for containerships are considered to be an integral part of the vessel and may be purchased exempt from New York State sales and use taxes.

For more information about the exemptions granted to commercial vessels primarily engaged in interstate or foreign commerce, see sections 528.9 and 527.5(a)(5) of the sales tax regulations. Because these regulatory provisions preceded the enactment of the new statutory definition of commercial vessel, you must read the new definition discussed in this memorandum into these provisions.

### **Commercial Aircraft**

The expanded definition of a commercial aircraft is an aircraft used primarily:

- to transport persons or property, for hire;
- by the purchaser of the aircraft primarily to transport the purchaser's own tangible personal property in the conduct of the purchaser's business; or
- for both of the above purposes.

To be exempt, a commercial aircraft must be primarily engaged in intrastate, interstate or foreign commerce. The qualified commercial activity for commercial aircraft, because it includes intrastate commerce, is broader than that provided for commercial vessels.

In addition to the exemption applicable to the aircraft, the exemption also applies to:

- machinery and equipment installed on the aircraft;
- property used by or purchased for the use of the aircraft for maintenance and repairs;
- the services of maintaining, servicing and repairing the aircraft, machinery or equipment installed on the aircraft, and property used by or purchased for the use of the aircraft;
- flight simulators purchased by commercial airlines.

Permanent air cargo containers suitable for repeated use, and specifically designed to facilitate the carriage of goods on aircraft, are exempt from New York State sales and use taxes. Repairs to air cargo containers are likewise exempt.

For more information about the exemptions granted to commercial aircraft primarily engaged in intrastate, interstate or foreign commerce, see TSB-M-80(4)S, *Exemptions For Commercial Aircraft*, and TSB-M-80(4.1)S, *Air Cargo Containers*. In reading TSB-M-80(4)S, please read-in the expanded definition of a commercial aircraft discussed in this memorandum and also substitute 50% for the out-of-date 75% threshold for determining when a commercial aircraft is primarily used in the qualifying commerce.

#### **Effective Date:**

The exemption applies to sales made and services rendered on or after December 1, 1996, (even if made or rendered under a prior contract).