

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

TSB-M-97(12)S
Sales Tax
November 28, 1997

SUMMARY OF SALES TAX CHANGES
1997 Budget Legislation

This memorandum summarizes sales and use tax provisions that were included in Chapter 389 of the Laws of 1997. Chapter 389 is the budget bill enacted in support of the 1997 - 1998 fiscal plan for the state of New York.

Homeowner's Association Parking Charges to Members - Tax Law §1105(c)(6)

Section 1105(c)(6) was amended to provide that receipts paid to a homeowner's association by its members for parking services are excluded from the 4% state parking tax, the 1/4% tax imposed within the Metropolitan Commuter Transportation District, and local sales taxes (other than in New York City).

A *homeowner's association* is an association the membership of which is comprised exclusively of owners or residents of residential dwelling units (such as houses, condominiums, and cooperatives), where such units are in a defined geographical area.

Parking charges paid to a homeowner's association by its members are exempt, provided the association operates the garage or parking lot, whether or not it is operated exclusively for its members, and the garage or lot is located in the association's defined geographical area.

These provisions do not exclude parking receipts paid by members to a New York City homeowner's association from the 6% parking tax imposed in New York City, under section 1107 (c) of the Tax Law or from the additional 8% Manhattan parking tax imposed pursuant to section 1212-A(a)(1). However, if the Manhattan dwelling unit involved is the member's primary residence, and parking is provided on a monthly or longer term basis, then the parking receipts continue to be exempt under section 1212-A(a)(1).

Effective Date: December 1, 1997

Vending Machine Food or Drink Sales - Tax Law §1105(d)(i)(3)

Section 1105(d)(i)(3) was amended to exempt sales of food or drink sold through coin- or currency-operated vending machines*, where such food or drink is sold unheated and is of a type commonly sold in supermarkets for consumption off the premises. This amendment will result in food and drink sold through such vending machines being treated for sales tax purposes in generally the same manner as food and drink sold in supermarkets. The legislation also provides that coffee and other hot beverages sold through vending machines would not be subject to tax, but such beverages would continue to be taxable when sold by restaurants and other establishments. Also, sales of sandwiches (whether or not by vending machine) would continue to be subject to tax.

*Where a coin- or currency-operated vending machine also accepts debit or credit cards, only the coin or currency sales will be exempt.

Effective Date: December 1, 1997

Food or Drink Sold Through Vending Machines - Tax Law §1105(d)(ii)(C)

Section 1105(d)(ii)(C) of the Tax Law, which exempted food or drink sold at ten cents or less through coin- or currency-operated vending machines, was repealed. (This provision is rendered obsolete).

Effective Date: December 1, 1997

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Circus Admissions - Tax Law §1105(f)(1) and 1116(d)(2)(B)

Section 1105(f)(1) was amended to eliminate the sales tax on admissions to live circus performances. A conforming amendment was made to section 1116(d)(2)(B).

Effective Date: December 1, 1997

Petroleum Business Tax - Tax Law §1111 (k)

A new subdivision (k) was added to Tax Law §1111, to clarify that the tax imposed by Article 13-A of the Tax Law is part of the taxable base for New York State sales and use tax purposes on motor fuel, diesel motor fuel, and residual petroleum products.

Bulk Vending Machines - Tax Law §1115(a)(13-a)

Section 1115(a)(13-a) of the Tax Law was amended to raise the sales tax exemption ceiling from 25 to 50 cents for sales made through coin- or currency-operated bulk vending machines.* A *bulk vending machine* contains unsorted merchandise that is dispensed at random upon insertion of the purchase price.

*Where a coin- or currency-operated vending machine also accepts debit or credit cards, only the coin or currency sales will be exempt.

Effective Date: December 1, 1997

Luggage Carts and Similar Devices - Tax Law § 1115(a)(13-b)

A new paragraph (13-b) was added to Tax Law §1115(a) to provide an exemption from sales and use taxes for temporary transportation devices (such as luggage carts and shopping carts) sold through coin- or currency-operated equipment*, provided the retailer is primarily engaged in selling such devices.

The carts and devices to which this exemption applies are those generally used to transport luggage at airports and bus terminals, or to

transport merchandise purchased in a store to the customer's vehicle.

*Where coin- or currency-operated equipment also accepts debit or credit cards, only the coin or currency sales will be exempt.

Effective Date: December 1, 1997

Sales Tax on Clothing - Tax Law §1115(a)(30)

Paragraph (30) of Tax Law §1115(a) was amended to exempt clothing (but not footwear) costing less than \$100 per item from the state sales and use taxes. A local option is provided for municipal governments that levy local sales and use taxes. The exemption is provided for two one-week periods (September 1 through 7, 1997, and September 1 through 7, 1998).

Beginning December 1, 1999, there will be a permanent state sales and use tax exemption on clothing costing less than \$100 per item. Counties and cities are given the option to provide a similar exemption from local taxes. See TSB-M-97(7)S, *September 1 - 7, 1997 One-Week Sales and Use Tax Exemption on Clothing*, for September 1 through 7, 1997 rules.

Effective Dates:

One-week exemptions:

September 1 through 7, 1997

September 1 through 7, 1998

Permanent exemption: December 1, 1999

Copies Made Through Coin-Operated Photocopiers - Tax Law § 1115(a)(31)

Paragraph (31) was added to Tax Law §1115(a) to exempt copies costing 50 cents or less per copy, when sold through coin- or currency-operated photocopying machines*.

*Where a coin- or currency-operated photocopying machine also accepts debit or credit cards, only the coin or currency sales will be exempt.

Effective Date: December 1, 1997

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Enhanced Emissions Inspection Equipment - Tax Law §1115(a)(31)

A new paragraph (31) was added to section 1115(a) of the Tax Law to exempt emissions inspection equipment from sales and use taxes. This equipment must be certified by the Department of Environmental Conservation for testing and inspecting motor vehicles pursuant to the enhanced emissions inspection program required by the Federal Clean Air Act of 1990. To qualify for the exemption, the equipment must be purchased by an official New York State inspection station licensed by the Department of Motor Vehicles and authorized to conduct the enhanced emission inspections. See TSB-M-97(8)S, *Enhanced Emissions Inspection Equipment*

Effective Date: September 1, 1997.

Omnibuses - Tax Law §1115(a)(32) and 1115(u)

Section 1115(a)(32) was added to the Tax Law to exempt from sales and use taxes omnibuses that weigh at least 26,000 pounds and measure at least 40 feet in length. Also exempt are purchases of parts, equipment, and lubricants (but not fuel) to be used in the operation of a qualified omnibus. For these purposes, an *omnibus* is a motor vehicle that is used to transport persons for hire, by a carrier who possesses a certificate of authority issued by the New York State Commissioner of Transportation or by an appropriate federal agency.

In addition, section 1115(u) was added to the Tax Law to provide that the service of installing property on a qualifying omnibus, and the services of maintaining, servicing, or repairing a qualifying omnibus are exempt from sales and use taxes.

Currently, Tax Law §1119(b) provides for a refund or credit of sales or use tax paid by an omnibus carrier providing local transit service in New York State, and operating pursuant to a certificate of public convenience and necessity

issued by either the New York State Commissioner of Transportation or by the appropriate Federal agency; or operating pursuant to a contract, franchise, or consent between the omnibus carrier and New York City. This sales tax refund or credit allowed is for the purchase or use of any omnibus, parts, equipment, lubricants, motor fuel, diesel motor fuel, maintenance, servicing, or repair, where the property or service is purchased or used by the omnibus carrier in the operation of the omnibus.

While there is a significant overlap between the existing omnibus refund and credit provisions and the newly added exemptions, the new exemptions do not contain the local transit service limitation found in section 1119(b), nor do the new exemptions apply to the purchase of motor fuel or diesel motor fuel. (An omnibus carrier that qualifies under the provisions of section 1119(b) would be entitled to a refund or credit for such fuel.)

However, the new provisions allow an omnibus carrier to use either the new exemption provisions in section 1115 or the refund/credit provisions in section 1119(b). But the carrier cannot use the provisions of both sections for the same property or services.

Effective Date: December 1, 1997

Wine and Wine Products Used At Wine Tastings - Tax Law §1115(a)(33)

Section 1115(a)(33) was added to the Tax Law to exempt wine or wine products furnished by the official agent of a farm winery, winery, wholesaler, or importer, and consumed by a customer or prospective customer at a wine tasting held in accordance with the Alcoholic Beverage Control Law. The wine tasting event must be held on premises that are approved for such activity under the provisions of the Alcoholic Beverage Control Law.

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Alternative Fuel Vehicles - Tax Law §1115(p)

Section 1115(p) of the Tax Law was amended to revive the exemption (which expired August 31, 1997) for the incremental costs of equipment included on new motor vehicles or installed in existing motor vehicles to enable such vehicles to use alternative fuels (alcohol, natural gas, propane, or hydrogen) or electricity, and for the cost of the service of installing the property used in converting the vehicles to alternative fuel vehicles.

The amendment also expands the exemption to include the purchase of the service of installing alternative fuel vehicle refueling property and the purchase of such property.

Alternative fuel vehicle refueling property is defined as property predominantly used either for: (1) the storage or dispensing of alcohol, natural gas, propane or hydrogen into the fuel tank of an alternative fuel vehicle; or (2) the recharging of an electric vehicle; where the storage, dispensing, or recharging takes place at the point where the fuel is delivered into the fuel tank of the vehicle or where the electric vehicle is recharged. Other qualifications for the exemption with respect to this property are that it is subject to an allowance for depreciation and that its original use begins with the purchaser.

Effective Date: March 1, 1998, through February 28, 2003

Car Wash Facility Sales - Tax Law §1115(t)

Subdivision (t) was added to section 1115 of the Tax Law to exempt from sales and use taxes the services of washing, waxing, or vacuuming a motor vehicle or other tangible personal property by means of coin-operated equipment* at a self-service car wash facility. This exemption does not apply to the purchase of any tangible personal property (such as towels, glass cleaners, or air fresheners). For the sale of the services to be

exempt, the purchaser of the services may not be assisted by either the vendor or an employee of the vendor.

For purposes of this exemption, coin-operated equipment* means equipment that accepts payment in the form of coins, currency, or tokens.

*Where coin- or currency- or token-operated equipment also accepts debit or credit cards, only the coin, currency, or token sales will be exempt.

Effective Date: December 1, 1997

Change in Vendor Collection Credit - Tax Law §1137(f)(2)

Section 1137(f)(2) was amended to increase the vendor collection credit from 1½% to 3½% of the state portion of the sales tax required to be collected from the vendor's customers. In addition, the maximum amount of credit allowed increases from \$100 to \$150, for each quarterly or annual filing period.

Effective Date: This change applies to quarterly returns covering periods beginning on or after March 1, 1999, and annual returns required to be filed after March 1, 1999.

Tax on the Transfer of Certain Motor Vehicle Damage Insurance Awards - Tax Law, Article 15

Article 15 of the Tax Law was repealed. Article 15, which had never taken effect, provided a voucher system for the sales tax component of certain insurance awards paid for motor vehicle damages.