

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

TSB-M-98(13)S
Sales Tax
November 24, 1998

Summary of 1998 Sales Tax Legislative Changes

In 1998, Governor George E. Pataki signed several new chapters into law. These enactments primarily create, expand, or clarify various tax exemptions. This memorandum briefly summarizes these legislative changes.

Out-of-State Businesses and Fulfillment Service Providers

The Tax Law was amended to change the definition of an *affiliated person* for purposes of provisions relating to fulfillment service providers. Persons are affiliated to each other if one owns, directly or indirectly, more than 5% of the other or if more than 5% of each person is owned, directly or indirectly, by the same person or by an affiliated group of persons. The Tax Law allows out-of-state businesses not otherwise having a connection with New York to purchase “fulfillment services” from a *non-affiliated* New York fulfillment service provider without being required to register for sales tax purposes.

Fulfillment services are defined as doing any one or more of the following on the premises of the service provider:

1. accepting orders electronically or by mail, telephone, telefax or Internet;
2. responding to consumer correspondence and inquiries electronically or by mail, telephone, telefax or Internet;
3. billing and collection activities; or
4. shipping orders from an inventory of products offered for sale by the customer of the fulfillment service provider.

The exclusion applies only where the fulfillment service provider is not an affiliated person with respect to its customer.

This amendment took effect September 1, 1998.

(See Tax Law, section 1101(b)(8)(v).)

Exemption for Gas or Oil Production

The Tax Law was amended to exclude from tax, services rendered directly to real property, property or land used or consumed, directly and predominantly, in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting.

The Tax Law was amended to also exclude the installation of property used or consumed, directly and predominantly, in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting.

The Tax Law was amended to exempt parts with a useful life of one year or less, tools and supplies used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting.

These amendments apply to sales made, services rendered or uses occurring on or after December 1, 1998.

(See Tax Law, sections 1105(c)(3) and (5) and 1115(a)(36).)

Sales Tax Refund Applications to be granted or denied within 6 months

The Tax Law was amended to require the Department to process a refund request within 6 months of receipt of a processible application. The law was amended to also eliminate the requirement that a taxpayer file a bond to cover court costs prior to appealing a refund denial.

This amendment applies to refund applications received on or after July 22, 1998.

(See Tax Law, section 1139(b).)

Sales Tax Exempt Organizations to Include Certain World War II Organizations, Including Merchant Seamen Groups

The Tax Law was amended to ensure that certain organizations whose members served during World War II are included in the definition of veterans organizations which qualify as exempt organizations for sales and compensating use tax purposes. This includes organizations whose members are merchant marine veterans, American Field Service civilian employees, Pan American flight crew

and aviation ground support employees, who served during World War II.

This amendment applies to sales tax quarterly periods beginning on or after September 1, 1998.

(See Tax Law, section 1116(a)(5)(B).)

Collection of State and Local Sales Tax on Building Materials on a Cash Basis

The Tax Law was amended to provide that certain persons primarily engaged in selling building materials to contractors, subcontractors or repairmen for the improvement of real property (*materialmen*), are allowed to remit State and local sales and compensating use taxes on sales of such materials and related services at the time the person actually receives the purchase price, or each portion thereof, from the customer. If the materialman has not collected the tax due on the full purchase price from the contractor, subcontractor or repairman within one year of the date of sale, the materialman must pay over the tax due on the balance of the purchase price remaining unpaid with the materialman's sales and compensating use tax return for the period which includes the date which is one year after the date of sale.

For purposes of this provision, a person must determine if it is a materialman each June first. A materialman is a person who, on June first of any year, was a materialman within the meaning of section 2 of the Lien Law in any two of the preceding four sales tax quarters.

This amendment takes effect June 1, 1999.

(See Tax Law, sections 1132(a) and 1135(f).)

Legislative Changes for Which TSB-Ms Have Been Issued

In addition to the changes described in the summaries above, detailed TSB-Ms concerning other 1998 amendments to the sales and use taxes have been issued on the following topics. The TSB-Ms are available on the Department's web site at <http://www.tax.state.ny.us> and from our Fax-on-Demand System at 1-800-748-3676.

One-Week Sales and Use Tax Exemption on Clothing and Footwear

The temporary clothing and footwear exemption periods are explained in TSB-M-98(7)S and TSB-M-98(7.1)S.

These amendments cover the following temporary periods; September 1 through 7, 1998, and January 17 through 24, 1999. A permanent clothing and footwear exemption from the statewide tax for items costing less than \$110 per article will go into effect December 1, 1999. Localities have the option of enacting this exemption.

(See Tax Law, sections 1101 (b)(15) and 1115(a)(30).)

Expanded Exclusion for Parking Charges Paid to Homeowners' Associations by their Members

The exclusion of parking charges paid to a homeowners' association by its members, including the parking taxes imposed by New York City, is explained in TSB-M-98(8)S

This amendment took effect September 12, 1998.

(See Tax Law, sections 1105(c)(6) and 1107(c); New York City Administrative Code, section 11-2049)

Exemption for Computer System Hardware

The exemption for computer system hardware used or consumed directly and predominantly in designing and developing computer software for sale is explained in TSB-M-98(5)S.

This amendment took effect June 1, 1998.

(See Tax Law, section 1115(a)(35).)

Exemption For College Textbooks

The exemption for textbooks purchased by full or part-time college students for their courses is explained in TSB-M-98(4)S.

This amendment took effect June 1, 1998.

(See Tax Law, section 1115(a)(34).)

Telecommunications Station Apparatus or Central Office Equipment

The expanded production exemption for telephone and telegraph central office equipment apparatus used directly and predominantly in receiving, amplifying, processing, transmitting, and retransmitting telephone or telegraph signals is explained in TSB-M-98(10)S.

This amendment took effect September 1, 1998.

(See Tax Law, sections 1108(b)(1), 1115(a)(12), and 1210(a)(1).)

Coin Operated Telephones

The increase in the exemption for telephone or telegraph service paid for by inserting coins in coin-operated telephones to twenty-five cents or less is explained in TSB-M-98(9)S.

This amendment took effect September 1, 1998.

(See Tax Law, section 1115(e).)

Responsible Persons Protesting Sales or Use Tax *Notices of Determination* or *Notice and Demands*

The elimination of the need for responsible persons to file protest applications with the Division of Tax Appeals and conference requests with the Bureau of Conciliation and Mediation Services is explained in TSB-M-98(12)S.

This amendment applies to applications for hearings and requests for conferences filed by businesses on or after July 22, 1998.

(See Tax Law, section 1138(a)(3).)