

Temporary Sales and Use Tax Exemptions in Liberty Zone and Resurgence Zone

The Tax Law has been amended to provide for three temporary State sales and use tax exemption periods for certain transactions occurring in the Liberty and Resurgence Zones in New York City and authorizing New York City to elect similar exemptions. New York City elected the temporary exemptions by its resolution of May 21, 2002.

In addition to the State's (4%) sales and use taxes, the temporary exemptions also apply to the ¼% Metropolitan Commuter Transportation District ("MCTD") taxes and to the 4% local sales and use taxes imposed in New York City for the benefit of the Municipal Assistance Corporation. The temporary exemptions do not apply to local sales and use taxes imposed by any county or other city or in any other area of New York City.

The temporary exemptions established by this legislation will apply during the following periods:

- June 9, 10 and 11, 2002;
- July 9, 10 and 11, 2002; and
- August 20, 21 and 22, 2002.

The Liberty Zone and the Resurgence Zone

The *Liberty Zone* and the *Resurgence Zone*, together, comprise a portion of the southern end of Manhattan. The Liberty Zone and the Resurgence Zone are collectively referred to in the remainder of this memorandum as the "Zones."

The northern boundary of the Zones is defined by a line running from the intersection of the Hudson River and the Holland Tunnel north along West Street to the intersection of Clarkson Street, then running east along the centerline of Clarkson Street to the intersection of Washington Street, then running south along the centerline of Washington Street to the intersection of West Houston Street, then running east along the centerline of West Houston Street to the intersection of the Avenue of the Americas and then continuing east along the centerline of East Houston Street to the easterly bank of the East River. Thus, stores, businesses and residences on the southerly sides of the centerlines of Clarkson Street, West Houston Street and East Houston Street are in the Zones, while those on the northerly sides of such streets are not in the Zones. Stores, businesses and residences on the westerly side of Washington Street between Clarkson Street and West Houston Street are in the Zones, while those on the easterly side are not. Stores, businesses and residences on either side of West Street are in the zones.

Application of temporary exemptions

The temporary exemptions are established by new section 1115-A of the Tax Law and apply to the following transactions occurring in the Zones during the three 3-day exemption periods:

- Most tangible personal property sold or used in the Zones where the purchase price per item is less than \$500 (Tax Law section 1105(a)). However, please see *Limitations on temporary exemptions* below.
- Prepaid phone cards sold or used in the Zones where the purchase price is less than \$500 per card. (Tax Law section 1105(b)(1)(D))
- Restaurant and bar meals, food and drink sold in the Zones where the total charge on the bill given to the customer is less than \$500. (Tax Law section 1105(d))
- Hotel occupancy charges in the Zones where the charge is less than \$500 per room, per day. (Tax Law section 1105(e))
- Charges by a roof garden, cabaret or other similar place (*e.g.*, a nightclub) in the Zones for admission, entertainment, amusement or merchandise, including meals, food, drink and any cover charge, where the total charge on the bill given to the patron is less than \$500. (Tax Law section 1105(f)(3))

Please note that tangible personal property or a prepaid phone card which is delivered by a vendor located outside the Zones to a purchaser at a location in the Zones will qualify for the temporary exemptions.

Limitations on temporary exemptions

These temporary exemptions are limited as follows:

- Receipts from the sale of, and consideration given or contracted to be given for, or for the use of, the following items of tangible personal property are **not** exempt:
 - ✗ motor vehicles;
 - ✗ motor fuel (*e.g.*, gasoline) and diesel motor fuel;
 - ✗ cigarettes and tobacco products;
 - ✗ alcoholic beverages (Note: Although liquor and beer sold as tangible personal property are not exempt, alcoholic beverages served at a restaurant, tavern or other establishment, or by a caterer, in the Zones are exempt - see above); and
 - ✗ building materials, whether or not incorporated into a structure, building or real property. *Building materials* includes lumber, nails, bricks, steel, windows, plumbing and electrical fixtures, paint, wall-to-wall carpeting, tile, wall coverings, wire, forms used to build foundations, sand used in sandblasting, and the like. Building materials are **not** exempt, regardless of whether or not they are to be incorporated into real or personal property.
- Other than sales and uses of prepaid phone cards, the temporary exemptions do not apply to the tax imposed on electric, gas, and telephone utility charges, telephone answering service and similar services by section 1105(b) of the Tax Law.

- The temporary exemptions also do not apply to the taxes imposed on admission charges (other than those of a roof garden, cabaret or other similar place) or on social or athletic club dues, by sections 1105(f)(1) or (2) of the Tax Law.
- The temporary exemptions do not apply to the tax on services (*e.g.*, information services, production or installation services, repair and maintenance services, storage services, parking or garaging services, interior decorating or design services, protective and detective services, or entertainment services) imposed by section 1105(c) of the Tax Law. However, if otherwise qualifying tangible personal property is sold in conjunction with a taxable service, the property would be exempt only if the vendor separately states a reasonable charge for the property on the bill given to the purchaser. For example, if an auto repair shop in the Zones performs a tune-up, and installs spark plugs and other parts each costing less than \$500 per item, the entire charge would be taxable unless the bill given to the customer separately states a reasonable charge for the parts, in which case the parts would be exempt and the service would be taxable.
- Nothing costing \$500 or more is eligible for the temporary exemptions.
- Tangible personal property or a prepaid phone card which is delivered by a vendor located within the Zones to a purchaser at a location outside of the Zones does **not** qualify for the temporary exemptions and is subject to tax at the combined State and local tax rate in effect at the location of delivery outside the Zones.

Local use tax liability

As stated above, the temporary exemptions do not apply to local sales and use taxes imposed by any county or other city. Therefore, purchases made by a business entity in the Zones for use in New York State outside of the Zones and outside of New York City at a location where the business maintains a place of business are subject to local use tax (but not State use tax) at the local rate in effect in such jurisdiction. This rule also applies to individuals who purchase items in the Zones for use in a jurisdiction outside of the Zones (and outside New York City) in which the individual maintains a place of residence.

Persons registered for sales tax purposes with the Tax Department should use their next due sales tax return to report and pay use tax due on property purchased and used for their business. Persons not registered for sales tax purposes should file Form ST-130, *Purchaser's Report of Sales and Use Tax*, to report and pay use tax due within 20 days of bringing the property into their jurisdiction of residence within New York State.

Delivery, shipping and handling charges

Charges by a vendor for delivery that are reasonable in relation to the total charge are not taken into account in determining if an item meets the "less than \$500" limitation. For example, if during a temporary exemption period, an item sells for \$495 and the vendor charges \$10 for delivery, the item and the delivery charge will qualify for exemption. However, delivery charges by the vendor for items costing \$500 or more remain subject to tax.

Orders for tangible personal property and prepaid phone cards placed during the temporary exemption periods

The temporary exemptions will apply to eligible items that are ordered by mail or telephone, or by using the Internet or E-mail, during one of the temporary exemption periods, even though the item is delivered after the temporary exemption period has ended. To qualify for the exemption in this case, the order must both be placed by the customer and accepted by the vendor during one of the temporary exemption periods and the item must be delivered to the customer at an address in the Zones.

Layaway sales of tangible personal property and prepaid phone cards

A layaway sale is a sale in which merchandise is set aside for future delivery to a customer who makes a deposit and agrees to pay the balance of the purchase price over a period of time before the merchandise is delivered. The sales price of the merchandise includes any additional charges a vendor makes for putting the merchandise on layaway. These charges must be added to the ticket price of the item for purposes of determining whether the cost of the item is less than \$500. If a vendor and a customer enter into a contract for a layaway sale of an item during one of the temporary exemption periods, the exemption will apply as long as the customer makes a deposit of at least 10% of the purchase price during the temporary exemption period and the vendor segregates the merchandise from other inventory. Delivery must still occur in the Zones.

Rain checks

The temporary exemptions will **not** apply to items purchased after the temporary exemption period has ended, even though the purchaser uses a rain check that was issued during the temporary exemption period.

Exchanges of tangible personal property

Where a customer purchases an item of property during one of the temporary exemption periods and returns the item for an exchange after the temporary exemption period has ended, the vendor need not charge tax on the exchanged item as long as it is similar to the item returned. Where a customer returns an item and receives a credit to purchase a different item in the future, or is allowed to purchase a different item at the time of the return, the appropriate sales tax will apply to the sale of the new item. For example, if a customer buys a digital camera during one of the temporary exemption periods and exchanges it for a DVD player after the temporary exemption period has ended, tax is due on the full price of the DVD player.

Coupons

Where a customer uses a "third-party" coupon, such as a manufacturer's coupon, to pay in part for tangible personal property, a prepaid phone card, a meal or food or drink, or a hotel room, the value of the coupon **does not** reduce the seller's price for purposes of determining whether the transaction cost is less than \$500. However, where a customer pays in part for an eligible item using a **store** coupon, for which the store, restaurant or hotel receives no reimbursement, the store coupon **does** reduce the seller's price for purposes of determining whether the price is less than \$500.