

## Summary of the 2003 Sales and Compensating Use Tax Budget Legislation

This memorandum summarizes amendments to the Tax Law and other provisions in Chapters 62 and 63 of the Laws of 2003 applicable to state and local sales and compensating use taxes.

### Clothing/Footwear Exemption

Beginning June 1, 2003, all clothing, footwear and certain items used to make or repair clothing will be subject to both state and local sales and compensating use taxes (including the ¼ % tax imposed by the state in the Metropolitan Commuter Transportation District (MCTD)<sup>1</sup>. Beginning June 1, 2004, there will again be an exemption from state sales and use taxes for clothing, footwear and certain items used to make or repair clothing costing less than \$110 per item of clothing, per pair of shoes or other article of footwear or per item used to make or repair clothing. However, this exemption will **not** apply on June 1, 2004, or thereafter, to any county or city sales and use taxes unless the county or city elects the exemption. In addition, on June 1, 2004, and thereafter, this exemption will also **not** apply to the state's MCTD ¼ % tax unless the county or city in the MCTD elects the exemption. Therefore, effective June 1, 2004, all clothing, footwear and items used to make or repair clothing will be subject to local taxes and, where applicable, the state's MCTD ¼ % tax **unless** a locality adopts by July 18, 2003, a local law, ordinance or resolution providing for the "permanent" or year-round exemption. A locality must adopt a local law, ordinance or resolution providing for the exemption even if it had the year-round exemption in effect prior to June 1, 2003. If a locality does not adopt by July 18, 2003, the appropriate local law, ordinance or resolution, as prepared by the Tax Department, specifically providing for the exemption; clothing, footwear and items used to make or repair clothing will be subject to the locality's sales and use taxes and, where applicable, the state's MCTD ¼ % tax on June 1, 2004, and thereafter. The Tax Department will inform vendors of the localities that have enacted the year-round exemption for sales and uses occurring on or after June 1, 2004.

While the permanent clothing and footwear exemption will not apply to either state or local sales taxes beginning June 1, 2003, clothing and footwear costing less than \$110 per item will be exempt from the state sales and use taxes during two temporary seven-day exemption periods in 2003 and 2004.

The first seven-day exemption period begins on Tuesday, August 26, 2003, and ends on Monday, September 1, 2003. The second seven-day exemption period begins on Monday, January 26, 2004, and ends on Sunday, February 1, 2004. During the two seven-day exemption periods, sales of clothing and footwear costing less than \$110 per item or items used to make or repair such clothing will be exempt from the 4 ¼ % state sales and use tax. The two seven-day exemption

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<sup>1</sup>The MCTD consists of the city of New York and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

periods will not apply to any county or city sales and use taxes, or to the state's  $\frac{1}{4}$  % MCTD tax, unless the county or city adopts by July 18, 2003, the appropriate local law, ordinance or resolution electing the two temporary exemption periods. The Tax Department will inform vendors of the localities that have elected the temporary exemption periods.

For further information on the imposition of sales taxes on clothing and footwear and the two seven-day exemption periods, please refer to TSB-M-03(2)S, *Notification Regarding the Sales and Use Tax Exemption for Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing and Footwear*.

(See Tax Law, Sections 1115(a)(30).)

### **State Sales and Compensating Use Tax Rate Increase**

As of June 1, 2003, the state sales and compensating use tax rate is increased from 4% to  $4\frac{1}{4}$ %. This rate increase will expire on May 31, 2005. On June 1, 2005, the state rate will revert to 4%.

In addition, the rates of the prepaid sales taxes on diesel motor fuel, motor fuel and cigarettes also increased by  $\frac{1}{4}$  %, effective June 1, 2003. Also, the vendor collection credit is now  $3\frac{1}{2}$ % of the amount of sales tax collected at the rate of  $4\frac{1}{4}$  % (rather than 4%), not to exceed \$150 per quarterly period or longer reporting period. These prepaid tax rates and the vendor collection credit will also revert back on June 1, 2005.

The provisions of the Tax Law which reduce the rate of state sales and use taxes on transmission and distribution (T&D) of gas and electricity by 25% per year over four years were not amended. Prior to June 1, 2003, such rate was 1%. Since the state sales and use tax rate was increased by  $\frac{1}{4}$  % on June 1, 2003, the T&D rate also increased from 1% to  $1\frac{1}{4}$  % on June 1, 2003; however, it will still drop to zero as scheduled on September 1, 2003.

For detailed information regarding these rate increases, please refer to N-03-13, *Important Notice-New York State Sales and Use Tax Rate Increase-Effective June 1, 2003*.

(See Tax Law Sections 1105, 1105-C, 1110, 1111(e)(2), 1111(j)(1), 1132(b) and 1137(f).)

### **New York City Sales and Compensating Use Tax Rate Increase**

On June 4, 2003, the rate of the local sales and compensating use tax imposed in New York City increased from 4% to  $4\frac{1}{8}$ %, bringing the combined state and local tax rate in New York City to  $8\frac{5}{8}$ % (which consists of the  $4\frac{1}{4}$ % state tax,  $\frac{1}{4}$  % MCTD tax and the  $4\frac{1}{8}$  % New York City tax). The rate of tax imposed on sales of hotel/motel room occupancy and on sales of cleaning and maintenance services (for fewer than 30 days) also increased by  $\frac{1}{8}$  %, as of June 4, 2003. However, the citywide 6% rate of tax imposed in New York City on sales of parking, garaging, or storing of motor vehicles, was not increased.

Effective September 1, 2003, the rate of local tax imposed by New York City on sales of cleaning and maintenance services (for 30 days or more), credit rating and reporting services, miscellaneous personal services, and protective and detective services will increase from 4% to 4  $\frac{1}{8}$  %.

All of these rate increases will expire on May 31, 2005, and, effective June 1, 2005, the local New York City sales and use tax rates will revert to 4%.

For detailed information regarding these rate increases, please refer to ST-03-8, *New York City Sales and Use Tax Rate Increase Effective June 4, 2003*.

(See Tax Law Sections 1107(a) and (c), and 1212-A(a).)

### **Compensating Use Tax Line on Personal Income Tax Return**

A law was enacted to require the Tax Department to include a line or lines on the New York State personal income tax returns in order to enable taxpayers to report and pay unpaid state and local compensating use taxes with their income tax returns. These lines will be added to personal income tax returns for income tax years beginning on or after January 1, 2003, to allow taxpayers to pay both sales and use taxes.

The law also requires the Tax Department to inform taxpayers of their legal requirements to remit such unpaid state and local taxes when they make purchases outside of New York State, whether in person or by remote means such as the Internet, mail-order and catalog sales.

As a result of this amendment, individuals, estates and trusts which are not registered sales tax vendors may report and pay on their personal income tax returns any unpaid state and local sales and compensating use taxes due for the year covered by the income tax return. The sales and use tax must be paid on or before the due date of the income tax return without regard to filing extensions.

(See Part R3 of Chapter 62 of the Laws of 2003.)

### **New York City Cigarette Excise Tax Included in State and Local Sales Tax Base**

Effective September 1, 2003, the New York City cigarette excise tax, imposed by the Administrative Code of the City of New York, will be added to the sales price used to compute state and local sales and use taxes on sales of cigarettes.

(See Tax Law Section 1111(h).)