

Summary of Recently Enacted Legislation Affecting Sales and Compensating Use Tax

Governor George E. Pataki recently signed into law two amendments affecting sales and compensating use taxes (sales tax). This memorandum summarizes those amendments.

New Car Lemon Law amendment for Motorcycles

On September 9, 2003, Governor Pataki signed Chapter 485 of the Laws of 2003 into law to amend sections 198-a and 198-b of the General Business Law.

This new legislation amends the definition of *motor vehicle* for the purpose of extending coverage of the New Car Lemon Law to motorcycles.

Background and sales tax implications

Section 1139(f) of the Tax Law provides that the Tax Department will refund sales tax paid by a consumer on the purchase price or capitalized cost in the case of a lease (hereinafter referred to collectively as the purchase price), or a portion thereof, of a new motor vehicle when the consumer recovers the purchase price, or portion thereof, of the motor vehicle from the manufacturer pursuant to the provisions of section 198-a of the General Business Law, generally known as the *New Car Lemon Law*. The sales tax refund claim must be filed within three years of the date the consumer received the refunded purchase price from the manufacturer. The sales tax refund is claimed using Form AU-11, *Application for Credit or Refund of Sales or Use Tax*. Please see TSB-M-86(9)S, *New Car Lemon Law Sales Tax Refund Chapter 145-Laws of 1986*, and TSB-M-86(9.1)S, *Amendments to the New Car Lemon Law Sales Tax Provisions Chapter 799, Laws of 1986*.

As a result of this new legislation, the Tax Department will refund sales tax paid by a consumer on the purchase price, or a portion thereof, of a new motorcycle when the consumer recovers the purchase price, or portion thereof, under the *New Car Lemon Law*, as described above.

The provisions of Chapter 485 are effective September 1, 2004.

Coin-operated vacuuming services

On September 9, 2003, Governor Pataki signed Chapter 489 of the Laws of 2003 into law to amend section 1115(t) of the Tax Law.

Chapter 489 provides an exemption from sales tax for receipts from the sale of the service of vacuuming a motor vehicle or other tangible personal property where:

- the purchaser or user vacuums such person's motor vehicle or other tangible personal property at the facility where the vacuum equipment is located;
- the vacuuming is performed exclusively by means of coin-operated equipment; and
- neither the vendor nor any employee of the vendor assists the purchaser in vacuuming the vehicle or other tangible personal property.

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. Please see TSB-M-97(12)S, *Summary of Sales Tax Changes, 1997 Budget Legislation*.

Prior to this amendment, section 1115(t) included an exemption for the receipts of a **car wash facility** for the service of vacuuming a motor vehicle as described above. Thus, prior to this law, if a facility other than a car wash facility had receipts from a coin-operated vacuum, the receipts were subject to sales tax because the exemption provided by section 1115(t) did not apply. Chapter 489 expands this exemption to cover such vacuuming services, regardless of whether the service is delivered at a car wash facility or any other location.

The exemption provided by Chapter 489 applies to the purchase of eligible vacuuming services rendered on or after December 1, 2003.