

Summary of the 2005 Sales and Compensating Use Tax Budget Legislation

Governor George E. Pataki signed into law Chapters 61 and 63 of the Laws of 2005 on April 12 and 13, 2005. This memorandum summarizes the amendments to the Tax Law made by those Chapters that are applicable to state and local sales and compensating use taxes.

Sales and compensating use taxes on clothing and footwear

Clothing and footwear and certain items used to make or repair clothing continue to be subject to both state and local sales and compensating use taxes (including the tax imposed by the state in the Metropolitan Commuter Transportation District (MCTD)¹) through March 31, 2006.

While clothing and footwear will continue to be subject to both state and local sales and use taxes through March 31, 2006, clothing and footwear costing less than \$110 per item of clothing or per pair of shoes or per item used to make or repair exempt clothing will be exempt from the state sales and use taxes during two separate seven-day exemption periods. The first seven-day exemption period begins on Tuesday, August 30, 2005, and ends on Labor Day, Monday, September 5, 2005. The second seven-day exemption period begins on Monday, January 30, 2006, and ends on Sunday, February 5, 2006.

Counties and cities imposing local sales and use taxes were given the option to exempt clothing and footwear during these two seven-day exemption periods from their local county or city sales and use taxes and, where applicable, from the 3/8% MCTD tax. The Tax Department will issue a future TSB-M to notify vendors and consumers of the localities that have elected the temporary exemption periods.

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

Note: As a result of additional legislation, specifically, Chapters 241 and 285 of the Laws of 2005, beginning September 1, 2005, there will be a year-round exemption from the 4% local tax imposed in New York City by section 1107 of the Tax Law for sales of clothing and footwear, and items used to make or repair exempt clothing, costing less than \$110 per item or pair. During the two previously enacted seven-day exemption periods (August 30, 2005, through September 5, 2005, and January 30, 2006, through February 5, 2006), purchases within New York City of eligible clothing and footwear, and items used to make or repair exempt clothing, will be exempt from the New York City local sales and use tax and will also be exempt from the state and the MCTD sales and use tax. Other than during the two seven-day exemption periods, purchases of all clothing and footwear and items used to make or repair clothing will continue to be subject to the 4% New York State sales tax and the 3/8% MCTD tax.

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

Recordkeeping and enforcement provisions relating to parking garage operators in Manhattan

The Tax Law was amended to make permanent the provisions of section 1142-A of the Tax Law. Section 1142-A contains special recordkeeping and enforcement provisions relating to parking garage operators in Manhattan to continue to ensure compliance with state and local sales taxes on parking services.

(See Tax Law, section 1142-A.)

Increase of the rate of the additional sales and compensating use tax imposed in the Metropolitan Commuter Transportation District (MCTD)

Effective June 1, 2005, the rate of the sales and compensating use taxes imposed by section 1109 of the Tax Law in the MCTD was increased from one-quarter of one percent (1/4%) to three-eighths of one percent (3/8%). The MCTD is composed of New York City (Bronx, Kings, New York, Queens and Richmond counties), and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties. These amendments also make certain conforming and technical changes related to this rate increase, including a corresponding change in the rate of the prepaid sales tax on motor fuel and diesel motor fuel in the MCTD as set forth in section 1111(e) of the Tax Law. For further information on the increase of the rate of the sales and use tax imposed in the MCTD see ST-05-4, *Metropolitan Commuter Transportation District (MCTD) Sales and Use Tax Rate Increase Effective June 1, 2005*.

Also effective June 1, 2005, as a result of 2003 budget legislation, the state sales and compensating use tax rate and the rate of local taxes imposed in New York City have each decreased to 4%. For further information on the 2003 budget legislation and the rate decreases see TSB-M-03(3)S, *Summary of the 2003 Sales and Compensating Use Tax Budget Legislation*, N-05-8, *Important Notice-New York State Sales and Use Tax Rate Decrease Effective June 1, 2005*, and ST-05-3, *New York City Sales and Use Tax Rate Decrease Effective June 1, 2005*.

(See Tax Law, section 1109.)

Empire Zones and related Qualified Empire Zone Enterprise (QEZE) exemptions

The General Municipal Law and the Tax Law were amended to make several changes to the Empire Zones program and the QEZE tax benefits and exemptions under the Tax Law.

These amendments specifically affect the sales and compensating use tax exemptions provided in section 1115(z) of the Tax Law by changing the employment test, including the definition of new business, used to determine whether a business enterprise qualifies for QEZE benefits.

Under the amendments, which apply for sales and compensating use tax purposes to employment tests which are measured by taxable years beginning on or after January 1, 2005, the following apply:

- A business enterprise which is identical in ownership and operation to an existing taxpayer may qualify as a new business if the two business enterprises are operating in different counties of the state. Where the existing taxpayer is a QEZE, the benefit period of the new company will be limited to the remainder of the benefit period of the existing taxpayer.
- A business enterprise that was first certified as an Empire Zone business under Article 18-B of the General Municipal Law before August 1, 2002, which has a base period of zero years or zero employment for its base period and is substantially similar in ownership and operation to an existing or previously existing taxpayer may qualify as a new business only if the business enterprise was formed for a valid business purpose and not solely to gain Empire Zone benefits.

Additional changes, also applicable to employment tests which are measured by taxable years beginning on or after January 1, 2005, were made to the employment test for business enterprises certified as Empire Zone businesses under Article 18-B of the General Municipal Law on or after April 1, 2005. For these business enterprises:

- The employment test will be met if the business enterprise's employment numbers in the state and in Empire Zones for the taxable year exceeds its employment numbers in the state and in Empire Zones, respectively, for the base period.
- The new business test must be met by business enterprises with a base period employment of zero as well as business enterprises with a base period of zero years.
- For purposes of the sales and use tax benefit period, the term *base period* means the three taxable years immediately preceding the company's test year.
- For purposes of the sales and use tax benefit period, if the business enterprise is so certified during its first taxable year and otherwise qualifies as a new business under the new provisions, the employment test will be met for that taxable year in any month in which its employment number exceeds zero.

The Tax Department will issue a future TSB-M to provide further details on these amendments and other QEZE information.

(See Tax Law sections 14 and 1115(z).)