

Supplemental Summary of 2006 Legislation Affecting Sales and Use Taxes Which Takes Effect in 2007

Exemption for milk crates

Effective September 1, 2007, milk crates purchased by a dairy farmer or a New York state licensed milk distributor will be exempt from sales and use tax if the crates are used exclusively and directly for the packaging and delivery of milk and milk products to customers. This exemption does not apply to crates that are also used to package and deliver juice, juice drinks or other non-milk products.

A dairy farmer or New York state licensed milk distributor who purchases qualifying milk crates must submit to the vendor a properly completed Form ST-121, *Exempt Use Certificate*, in order to claim this exemption. Part III, box M of Form ST-121 must be completed.

(Chapter 339, Tax Law, section 1115(a)(19-a))

Deduction or refund available for certain bad debts

The Tax Law has been amended to provide that where a *private label credit card* (see definition on page 2) account is held by a *lender* (see definition on page 2) and all or a portion of a debt owed the lender is charged off by the lender as worthless, either the vendor or lender may claim a credit or refund for sales tax previously remitted by the vendor that is attributable to the worthless account. Prior to this amendment, only a vendor that made and financed sales was eligible for the credit or refund with respect to sales tax paid on worthless accounts pursuant to section 534.7 of the sales tax regulations.

In order for a vendor or lender to be eligible to claim a credit or refund of sales tax attributable to a worthless account held by a lender, the following conditions apply.

- The vendor has reported and paid the sales tax.
- The lender and the vendor have filed a joint election with the Tax Department, on a form prescribed by the department, signed by both parties, designating which of those parties is entitled to claim the credit or refund. The election may be amended or revoked if both parties sign and file a new election.
- No credit or refund was previously claimed or allowed on any portion of the account.
- The account is worthless in whole or in part, and has been charged off by the lender for federal income tax purposes, or if the lender is not required to file a

federal income tax return, the account was charged off in accordance with generally accepted accounting principles.

- The contract between the vendor and the lender contains an irrevocable relinquishment of all rights to the account by the vendor and a transfer of those rights to the lender.
- The party electing to claim the credit or refund files a claim in a manner prescribed by the Tax Department.
- If the lender is claiming the credit or refund, it is registered as a vendor for sales tax purposes (see Publication 750, *A Guide to Sales Tax in New York State* for more information).

Definitions relating to lender bad debt credits or refunds

For purposes of this new law:

The term *private label credit card* means:

- any charge card or credit card that carries, refers to or is branded with the name or logo of a vendor and that can be used for purchases from the vendor (or any subsidiaries or affiliates thereof).

The term *lender* means:

- any person who holds a private label credit card account which that person purchased directly from the vendor who reported the tax;
- any person who holds a private label credit card account pursuant to a contract directly with the vendor who reported the tax; or,
- any person who is either an affiliated entity, as defined in section 1504 of the Internal Revenue Code, or an assignee of a person described immediately above.

Note: In the case of a private label credit card that can be used for purchases from vendors other than the vendor (or subsidiaries or affiliates thereof) whose name or logo appears on the card, the credit or refund is limited to the sales tax paid that is related to the portion of the bad debt attributable to purchases through the vendor (or subsidiaries or affiliates thereof) whose name or logo appears on the card.

In addition, the new law codifies the current sales tax regulations concerning the circumstances under which a vendor is eligible for a bad debt credit or refund in relation to sales made through a leased department or concession.

The vendor or lender must claim a credit or refund for sales tax within three years from the time the sales tax return that included the bad debt sale was filed or two years from the time the sales tax with respect to such sale was paid, whichever is later. The credits or refunds available under these provisions are not eligible for the payment of interest.

If a recovery is made on a bad debt account that was the subject of a bad debt refund, then the lender or the vendor which received the bad debt refund with regard to that account must report the sales tax attributable to the amount recovered on the first subsequent sales tax return filed by the lender or vendor, whichever claimed the credit or refund, and the vendor or lender must remit the sales tax on that amount with the return.

These amendments are effective for bad debts that have been charged off as worthless by vendors or lenders for federal income tax purposes or, if the vendor or lender is not required to file a federal income tax return, have been charged off in accordance with generally accepted accounting principles, on or after January 1, 2007. The Tax Department will issue a future TSB-M with additional details on this law.

(Chapter 664, Tax Law, section 1132(e-1))