

Summary of the 2009 Sales and Use Tax Budget Legislation

This memorandum summarizes the amendments to the Tax Law made by Chapters 57 and 59 of the Laws of 2009 (New York State budget legislation for 2009-2010) that apply to sales and use tax (sales tax). The following legislative changes are summarized in this memorandum:

- Sales tax imposed on certain transportation services
- Definition of *sales tax vendor* expanded to include out-of-state sellers with related businesses in New York State
- Amendments affecting the application of sales and use taxes to aircraft, vessels, and motor vehicles
- Increase in the prepaid sales tax on cigarettes
- Empire Zone Program changes
- Increase in the special tax on the rental of passenger cars
- Compliance and enforcement provisions in Part V-1 of Chapter 57 of the Laws of 2009
- Compliance and enforcement provisions in Chapter 59 of the Laws of 2009
- Tax preparer registration program

Sales tax imposed on certain transportation services

The Tax Law was amended to impose sales tax on transportation services provided using limousines, black cars, and certain other motor vehicles, with a driver. However, the new law does not apply to taxicab and bus services; ambulance, ambulette, or emergency service transportation; scheduled public transportation services; services provided in connection with funerals; or interstate/international services.

This amendment applies to taxable transportation services provided on or after June 1, 2009. For more information about the sales tax imposed on certain transportation services, see TSB-M-09(2)S, *Sales Tax Imposed on Certain Transportation Services*, and TSB-M-09(7)S, *Additional Guidance Relating to Sales Tax on Certain Transportation Services*, which are available on the Tax Department's Web site at www.nystax.gov.

(Tax Law sections 1101(b), 1105(c)(10), 1106(1), 1111(o)(2), and 1213)

Definition of *sales tax vendor* expanded to include out-of-state sellers with related businesses in New York State

The Tax Law was amended to expand the definition of *sales tax vendor* to include, under certain conditions, out-of-state sellers (remote affiliates) of taxable tangible personal property or services that are affiliated with businesses in New York (New York affiliates). This amendment applies to sales made or uses occurring on or after June 1, 2009.

For more information about the expanded definition of sales tax vendor and conditions that require an out-of-state seller to register as a sales tax vendor, see TSB-M-09(3)S, *Definition of a*

Sales Tax Vendor is Expanded to Include Out-of-State Sellers with Related Businesses in New York State, which is available on the Tax Department's Web site at www.nystax.gov.

(Tax Law sections 1101(a) and 1101(b)(8)(i)(G), (H) and (I))

Amendments affecting the application of sales and use tax to aircraft, vessels, and motor vehicles

The Tax Law was amended to provide that certain transactions involving the sale, purchase, or use of aircraft, vessels, or motor vehicles that were previously exempt from sales tax are taxable beginning on or after June 1, 2009. In particular, the exemptions that apply to commercial aircraft and to nonresident purchasers have been amended to restrict the application of these exemptions in certain situations.

For more information about these amendments, see TSB-M-09(4)S, *Amendments Affecting the Application of Sales and Use Tax to Aircraft, Vessels, and Motor Vehicles*, which is available on the Tax Department's Web site at www.nystax.gov.

(Tax Law sections 1101(b)(17) and 1118(2))

Increase in the prepaid sales tax on cigarettes

Effective June 1, 2009, the prepaid sales tax on cigarettes held for sale or use in New York State was increased to 8%.

For more information about the prepaid sales tax on cigarettes, see Notice N-09-6, *Important Notice Regarding Prepaid Sales Tax on Cigarettes*, which is available on the Tax Department's Web site at www.nystax.gov.

(Tax Law section 1111(j))

Empire Zone Program changes

Effective September 1, 2009, the up-front sales tax exemption for purchases made by a QEZE was repealed (Section 1115(z) of the Tax Law). Instead of the up-front exemption, new section 1119(d) of the Tax Law provides that an eligible QEZE must apply for a refund or credit of tax paid on qualifying purchases.

For more information about the changes to the QEZE program, see TSB-M-09(12)S, *Changes to Qualified Empire Zone Enterprise (QEZE) Program (Article 28 and 29) – Effective September 1, 2009*, which is available on the Tax Department's Web site at www.nystax.gov.

(Tax Law sections 1115(z) and 1119(d))

Increase in the special tax on the rental of passenger cars

The rate of the state-wide special tax on the receipts from the rental of passenger cars that are rented or used in New York State is increased to 6%. This tax is in addition to the applicable state and local sales tax and the special supplemental tax of 5% imposed by Chapter 25 of the Laws of 2009 on passenger cars rented or used within the Metropolitan Commuter Transportation District.

The 6% rate applies to rentals made or uses occurring on or after June 1, 2009, and is subject to the applicable transitional provisions in sections 1106 and 1217 of the Tax Law.

For more information about the special taxes on the rental of passenger cars, see TSB-M-09(1)S, *Increase in the Special Tax on the Rental of Passenger Cars*, TSB-M-09(6)S, *Special Supplemental Tax on the Rental of Passenger Cars within the Metropolitan Commuter Transportation District*, and Important Notice N-90-26, *Special Tax on the Rental of Passenger Cars*, which are available on the Tax Department's Web site at www.nystax.gov.

(Tax Law section 1160-a)

Compliance and enforcement provisions in Part V-1 of Chapter 57 of the Laws of 2009

The Tax Law was amended to enact a package of provisions intended to increase taxpayer compliance with the Tax Law and to improve the Tax Department's ability to enforce the payment of all taxes that are due and owing. The following is a brief description of the provisions included in the legislation that affect sales tax. A complete summary of all these compliance and enforcement provisions will be in a future document published by the Tax Department.

Requirement to make sales tax electronic records available and new penalties related to record keeping

Requirement to make sales tax electronic records available. The legislation provides that any person who elects to maintain sales tax records in an electronic format is required to make the electronic records available and accessible to the Tax Department, even if the records are also maintained in a hard copy format.

Penalty for failure to maintain or make available records. If a person fails to maintain sales tax records or make them available to the Tax Department, the penalty is up to \$1,000 for the first quarter or part of a quarter for which the failure occurs and up to \$5,000 for each subsequent quarter or part thereof for which the failure occurs. This penalty applies to sales tax quarterly periods beginning on and after June 1, 2009.

Penalty for failure to present or make available records in auditable form. If a person fails to present or make available sales tax records for the Tax Department's review in a form that can be audited, the penalty is up to \$1,000 for each quarter or part of a quarter for which

the failure occurs. This failure occurs when the records presented lack sufficient organization or are otherwise inadequate to permit direct reconciliation of the receipts, invoices, or other source documents with the entries for the quarterly period in the books and records and on the sales tax returns of that person. This penalty applies even if these records, if reorganized, are adequate to verify credits, receipts, and the taxability of items and to perform a complete audit. This penalty applies to failures occurring on or after April 7, 2009.

Penalty for failure to provide electronic records. If a person's records are maintained in an electronic format and the person fails to make the electronic records available and accessible for review by the Tax Department, a penalty of up to \$5,000 will apply for each quarter or part of a quarter for which the failure occurs. This penalty applies to failures occurring on or after April 7, 2009.

The penalties described above are in addition to any other penalties applicable to sales tax. However, these may not be imposed or collected more than once for failures for the same quarterly period or part thereof.

If the Tax Department determines that a failure resulting in the imposition of any of the above described penalties was entirely due to reasonable cause, and not due to willful neglect, the Tax Department will waive the penalty.

(Tax Law sections 1135(h) and 1145(i), (j), and (k))

Increased interest rates on underpayments

The sales tax interest rate for underpayments has been increased to the greater of fourteen and one-half percent or the federal short-term rate plus seven percent. The minimum underpayment interest rate for all taxes is increased to seven and one-half percent. Also, if no underpayment interest rate is set for any calendar quarter, the rate will be seven and one-half percent for that quarter.

This increase in interest rates took effect on April 7, 2009, and applies to interest chargeable or due on taxes or any other amounts, or any portion of those taxes or amounts, that remain or become due on and after that date.

(Tax Law sections 1142(9) and 1145(a)(1)(ii))

Interest on sales tax refunds

In the case of sales tax refunds, the new law provides that interest does not accrue on sales tax refunds claimed on a late return or on an application for refund or credit before the date the return or application is filed with the Tax Department. In addition, the new law provides that no interest will be paid on a sales tax refund if the refund is issued within three months of the return due date, the return filing date, or the filing date of an application for a sales tax refund or credit, whichever is later.

These sales tax provisions apply to refunds or credits claimed on or after June 1, 2009.

(Tax Law section 1139(d))

Information returns required to be filed by motor vehicle insurers, franchisors, and alcoholic beverage wholesalers

The new legislation requires that information returns be filed by:

- any motor vehicle insurer that makes payments on behalf of their insured persons to persons who service or repair the insured person's motor vehicle;
- every franchisor, as defined by section 683 of the General Business Law, that has at least one franchisee required to be registered for sales tax purposes under section 1134 of the Tax Law; and
- alcoholic beverage wholesalers, as defined in section 3 of the Alcoholic Beverage Control Law that, with certain exceptions, make sales of alcoholic beverages without collecting sales tax (e.g., sales for resale).

The first information returns under the new law were due on or before September 21, 2009, and cover the period from March 1, 2009, to August 31, 2009. The second return is due on or before March 22, 2010, and will cover the period September 1, 2009, to February 28, 2010. Annual returns must then be filed on or before March 20th for each succeeding year, and must cover the four sales tax quarterly periods immediately preceding that date.

The new law provides that persons covered by the new filing requirement must give each vendor included on the return a *statement* showing the information reported for that vendor in the information return. The statement must be given to the vendor on or before March 20th of each year.

Comprehensive guidance that gives more details regarding this new amendment has been issued. See TSB-M-09(8)S, *New Requirement for the Filing of Information Returns for Insurers of Motor Vehicles*, TSB-M-09(8.1)S, *Additional Guidance Relating to the New Requirement for the Filing of Information Returns for Insurers of Motor Vehicles*, TSB-M-09(9)S, *New Requirement for the Filing of Information Returns for Franchisors*, TSB-M-09(9.1)S, *Additional Guidance Relating to the New Requirement for the Filing of Information Returns for Franchisors*, TSB-M-09(10)S, *New Requirement for the Filing of Information Returns for Alcoholic Beverage Wholesalers*, and TSB-M-09(10.1)S, *Additional Guidance Relating to the New Requirement for the Filing of Information Returns for Alcoholic Beverage Wholesalers*.

(Tax Law sections 1136(i) and 1145(i))

Criminal penalties

The amendments created a new series of crimes under Article 37 of the Tax Law entitled “*Tax Fraud Acts*”. These amendments relating to tax fraud apply to all taxes administered by the Tax Department. Under the new law, anyone who engages in a tax fraud act would be committing a class A misdemeanor. If a person commits a tax fraud act with intent to defraud the state or a political subdivision, or to evade tax, the person would be committing a class E, D, C, or B felony. The felony level would depend on the dollar amount of tax not paid. These new criminal penalty provisions apply to offenses committed on or after April 7, 2009.

(Tax Law sections 1800(c), 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1831, 1832, and 1833)

Fraud penalties

The Tax Law has been amended to increase the civil penalty for failure to pay tax due to fraud. The penalty has been increased from 50% of the amount of unpaid tax to two times the amount of unpaid tax plus interest on the unpaid tax at the rate of 14% or the underpayment rate, whichever is higher. As a result of this change, the additional fraud penalty of 50% of the interest payable on the tax due has been eliminated.

In addition, a penalty for aiding or assisting in the giving of fraudulent returns, reports, statements, or other documents has been added to the Tax Law. The penalty is an amount not exceeding \$5,000.

New penalties were added under the Tax Law for any taxpayer that submits a false or fraudulent document to the Tax Department. The new penalties are \$100 for each false or fraudulent document submitted with a return, with a total maximum penalty of \$500 for each return submitted with the false or fraudulent documents.

The new fraud penalties apply to such fraudulent actions occurring on or after April 7, 2009.

(Tax Law sections 1145 (a), (i), and (j))

Compliance and enforcement provisions in Chapter 59 of the Laws of 2009

Bad check or failed electronic withdrawal fees

The new law authorizes the Tax Commissioner to impose a \$50 fee when a check, money order, or electronic funds withdrawal, in payment of any amount due under a tax, fee, special assessment, or other imposition administered by the department, is returned without payment. If a payment is returned, the Tax Department will send a separate bill for \$50 for each tax return or other tax document associated with the returned payment. In the case of an electronic funds withdrawal, the \$50 fee will not be imposed if the reason for the payment’s return is an error by the Tax Department or the originating depository financial institution. This authorization is

effective for payments related to authorized tax documents required to be filed for sales tax periods on or after January 1, 2009.

(Tax Law section 30)

Tax preparer registration program

Section 32 has been added to the Tax Law to provide that certain tax return preparers who prepare New York State returns for individuals or businesses for a fee, and facilitators who facilitate the making of refund anticipation loans or refund anticipation checks, must register annually with the Tax Department. Certain preparers must also pay an annual \$100 registration fee. Tax preparers who prepare personal income tax returns for compensation must register with the Tax Department before they prepare any income tax returns that will be filed on or after December 31, 2009. Tax preparers who prepare returns other than personal income tax returns and do not prepare any personal income tax returns must register with the Tax Department before they prepare any returns that will be filed on or after December 31, 2010.

For more information on who is required to register and the method for registering for the tax preparer registration program, see TSB-M-09(15)S, *Tax Preparer Registration Program*.

(Tax Law section 32)

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.