

Additional Guidance Relating to the Sales Tax on Certain Transportation Services

Introduction

This TSB-M provides additional guidance relating to the sales tax on transportation services that takes effect June 1, 2009. It supplements the previously issued TSB-M-09(2)S, *Sales Tax Imposed on Certain Transportation Services*. TSB-M-09(2)S announced that New York State and local sales taxes (sales tax) will apply to certain types of transportation services. Specifically, sales tax will apply to transportation services provided by livery service, including limousines, black cars, and certain other motor vehicles, (e.g., community cars or vans) with a driver (see *Definitions* below). However, the new sales tax will not apply to service provided by a taxicab, bus, scheduled public transportation, interstate services, or to services provided in connection with funerals. Also, the tax does not apply to ambulance, ambulette, or emergency service transportation.

Definitions

For purposes of this tax on transportation services, the following definitions apply:

Livery service is service provided by *limousine, black car, or other motor vehicle*, with a driver. However, *livery service* does **not** include transportation by *taxicab, bus*, or any scheduled public transportation service.

Limousine is a vehicle with a seating capacity of up to fourteen (14) persons, excluding the driver and may be dispatched from a central facility.

Black car is a for-hire vehicle with a seating capacity of up to fourteen (14) persons, excluding the driver, dispatched from a central facility.

Other motor vehicle is any other vehicle with a seating capacity of up to fourteen (14) passengers, excluding the driver, other than a taxicab or bus, such as a van or conventional passenger car.

Bus is a motor vehicle with a seating capacity of fifteen (15) or more passengers in addition to the driver and used for the transportation of persons.

Taxicab is a motor vehicle other than a limousine, black car, other motor vehicle, or bus, that is used in the business of transporting passengers for compensation, is operated under a license or permit issued by a local authority (county, city, town, village, etc.), contains a taximeter and can be legally hailed for service by a customer (unless the licensing locality does not allow the hailing of vehicles).

Unrelated person is a person who is **not** a *related person* as defined in Section 465(b)(3)(C) of the Internal Revenue Code (IRC). Examples of related persons under that code section are:

- Members of a family, but only an individual's brothers and sisters, half-brothers and half-sisters, spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.);
- A corporation and an individual who owns directly or indirectly more than 10% of the value of the outstanding stock of the corporation; and
- A partnership or LLC and a person who owns directly or indirectly more than 10% of the capital or profits of the partnership or LLC.

For a complete listing of *related persons*, see IRS Publication 925, *Passive Activity and At-Risk Rules*. This publication is available on the IRS Web site, www.irs.gov.

Transportation services subject to tax

Transportation service is the service of transporting, carrying, or conveying a person or persons by livery service and includes transporting, carrying, or conveying property of the person being transported, whether owned by or in the care of such person. Thus, transportation service does not include transporting property by itself. Livery service means service provided by limousine, black car, or other motor vehicle (e.g., community cars or vans), with a driver, but excluding a taxicab or a bus, and also excluding any scheduled public service. Transportation service does not include interstate services or services provided in connection with funerals. Also, taxable transportation service does not include ambulance, ambulette, or emergency service transportation.

Who sells the transportation service subject to tax? Who must register for sales tax purposes and collect and remit tax on sales of transportation services?

General

Any person who sells a taxable service to a consumer is the vendor of the service. As a vendor, that person must collect the tax from the consumer on that sale. As a vendor, that person also must register for sales tax purposes, keep records, file returns, and remit tax required to be collected. The vendor of the service must collect any tax due at the time of the sale. Since the sales tax is an accrual tax, the vendor must accrue and remit the tax with its tax return even if it has not yet collected it from the customer.

In some cases, the seller of the transportation service uses his or her own vehicle to provide the service, in which case he or she is the vendor and must collect tax on the charges to the passenger for the service. In other cases, the seller of the service is a central dispatch facility

or “base” (base) that receives requests for service from customers. The base charges the customer for the service and receives payment for the service from the customer. The base may not own any vehicles itself. Instead, it “farms out” the call to another business that has vehicles and that other business picks up and transports the passengers. The base then pays a portion of the amount it receives from the passenger to the business to which it farmed out the call. In this case, the base is the vendor of the taxable service and must register and collect and remit the tax. When the base farms out a call in this manner, it is purchasing the transportation service for resale from the business to which it farmed out the call. See the *Purchases of transportation services for resale* section on page 7.

In another case, if a customer contacts a so-called car service “broker” by telephone or via the Internet, and the broker is located outside New York State and does not own vehicles in this state or provide transportation service in this state, then the business in this state that provides the service to the person who contacted the broker must collect the sales tax from the broker on the amount charged for the service.

However, if one person owns or is the lessee of the vehicle used to provide transportation services, and that person leases or sub-leases the vehicle to a driver who is an *unrelated person*, and that unrelated person provides the service to the consumer, then a special rule applies as to who is the vendor of the service and who must collect and pay tax on the service. (See Special rule below.)

Special rule for vendors that lease vehicles to unrelated persons who provide transportation services

Section 1111(o) of the Tax Law provides a special rule as to who must collect and remit tax in cases where a person leases or rents a vehicle to an unrelated person (as defined on page 2) that will use the vehicle to provide transportation services. An example of such a situation is when the owner or lessor of a limousine leases or rents the limousine to an unrelated person who provides and charges for a transportation service. In such situations, the owner or lessor that leased the vehicle to the unrelated person is deemed to be providing the transportation service during the period that the unrelated person uses the vehicle to provide the service. In addition, the owner or lessor is deemed to be the vendor of the service provided by the unrelated person, the tax is deemed to be imposed on the unrelated person, and the owner/lessor, as vendor, must collect tax from the unrelated person. In this case, the unrelated person does not collect any tax from the passengers.

As the vendor of the transportation service, the owner or lessor must register for sales tax purposes, as described on page 5, and collect tax from the unrelated person on 200% of the amount that the owner/lessor charges the unrelated person to use the vehicle. The tax in this situation would be based on the combined state and local sales tax rate in effect in the jurisdiction where the unrelated person takes delivery of the vehicle from the owner or lessor (regardless of where the unrelated person uses the vehicle to provide service). The 200% amount subject to sales tax includes any charge related to insurance, maintenance, fuels, repairs, etc., and regardless of whether the driver transports any persons or earns any fares.

The owner or lessor must provide the unrelated person an invoice showing the amount charged to use the vehicle. The invoice must also separately state the tax due on that charge and must also include the owner's or lessor's name, address, and phone number and the unrelated person's name, address, and phone number.

The unrelated person who provides and charges for the transportation service (the driver) to the passengers should not collect sales tax from the passengers. The unrelated person providing the service must indicate on any invoice it gives to the passenger that sales tax was collected by an unrelated owner or lessor, together with the owner's or lessor's name, address, and phone number and the unrelated person's name, address, and phone number.

Example 1: XYZ is a transportation service provider. XYZ leases a limousine to Driver B for a period of twelve hours. These two businesses are unrelated. Driver B picks up employees of Company R in Syracuse, New York, and drives them to and from a business conference in Buffalo, New York. XYZ must collect sales tax from Driver B based on the jurisdiction where Driver B took delivery of the vehicle. The receipt subject to the transportation service sales tax is 200% of XYZ's lease charge to B and includes any charges for insurance, maintenance, fuel, repairs, etc. In addition, XYZ must separately collect sales tax from Driver B on the amount that XYZ charges for the limousine. (See page 8, Sales tax on the lease or rental of a livery vehicle to an unrelated driver). Driver B does not charge sales tax on its bill to Company R. However, Driver B must provide on any invoice to Company R a statement that sales tax was collected by XYZ, along with XYZ's name, address, and phone number and Driver B's name, address, and phone number.

Example 2: A black car transportation service company leases vehicles it uses to provide transportation service from a motor vehicle leasing company on a long-term basis (a lease for a term of one year or more). Because the motor vehicle leasing company does not provide the transportation service, it is not deemed to be the vendor of the transportation services provided by the black car service company. (See page 8, Sales tax on the lease or rental of a livery vehicle to an unrelated driver.)

Example 3: XYZ Company operates a community car base station. Sam rents a community car from XYZ for \$180 per 12-hour shift. Sam is dispatched by the base station to provide transportation service and is paid in cash for his services by his customers. XYZ Company is deemed to be the provider of the transportation services and must collect tax from Sam, based on the special rule described above. That is, XYZ Company collects tax from Sam on the amount of \$360 (200% of the rental receipt) and must remit the tax required to be collected with its next sales tax return. XYZ Company must also collect from Sam the state and local sales taxes due on the rental of the car.

Sales tax registration

If you sell taxable transportation services and you are not currently registered for sales tax purposes, you must apply for a *Certificate of Authority* from the Tax Department at least 20 days before making taxable sales. This certificate authorizes you to collect the required sales taxes on taxable transportation services, and to issue or accept sales tax exemption documents. If you make taxable sales before you receive your *Certificate of Authority*, you may be subject to substantial penalties.

You can register for sales tax purposes by using the *New York State Online Permit Assistance and Licensing* Web site at www.nys-permits.org, or you can fill out Form DTF-17, *Application to Register for a Sales Tax Certificate of Authority*, and send it to the address listed on that form. You must apply for your *Certificate of Authority* at least 20 days prior to making taxable sales.

Once you are registered for sales tax purposes, you must collect tax, file returns, remit tax, and keep records. For more information about the requirements and responsibilities of a person required to collect sales tax, see Publication 750, *A Guide to Sales Tax in New York State*, which is available on the department's Web site at www.nystax.gov.

Receipt subject to tax

General

The receipt subject to tax includes any amount the service provider charges the customer for the transportation service. The charge to the customer may be based on mileage, trip, time consumed, or any other basis. Any handling, carrying, baggage, booking service, administrative, mark-up, additional, or other charge, of any nature, made in conjunction with the transportation service is also part of the receipt subject to tax. For example, the following charges are included in the receipt subject to sales tax: service charge, decoration charge, fuel surcharge, meet and greet service charge, no-show charge, overnight charge, telephone service charge (whether intrastate or interstate), waiting service charge, and parking fees and tolls incurred by the service provider and passed along to the customer.

However, the black car operators' injury compensation fund surcharge imposed on the passenger that black car operators are required by law to collect from the passenger are not part of the receipt subject to tax.

Only intrastate services are subject to tax

Receipts from the sale of a transportation service are subject to sales tax only if the service begins and ends in New York State (intrastate service). If the service begins and ends in New York, it is taxable even if it passes outside the state during a portion of the trip. A charge for transportation service made outside the state is taxable so long as the service begins and ends

in New York State. Transportation services that begin or end outside the state (interstate service) are not subject to tax. If a round-trip service starts in New York and proceeds to a destination in another state, and then later the return leg of the round-trip service ends up back in New York, a single charge for that round-trip service would not be taxable, since the trip was interstate in nature.

Example 4: A limousine service picks up a passenger in Albany, New York, and takes the passenger to the Meadowlands in New Jersey for a football game. The limousine waits at the stadium until the end of the game, and then drives the passenger back to Albany. This transportation service is an interstate service and is not subject to sales tax.

Example 5: A car service is dispatched from a New York base to pick up a passenger in Connecticut and to bring that passenger to a location in New York. This service is not subject to New York sales tax as the trip did not begin and end in New York State.

Which local tax applies

When a transportation service begins in one jurisdiction (county or city) in New York State but ends in another jurisdiction in New York State, the local tax that applies is the tax imposed by the jurisdiction where the service begins (in some counties, cities also impose tax and if the service begins in that city, then the local tax is the combined county and city tax). The service begins at the point where the passenger is picked up.

Example 6: A limousine picks up a passenger in the city of Albany (Albany County), New York, and drives to Syracuse (Onondaga County), New York, for a basketball game. The limousine waits until the end of the game, and then drives the passenger back to Albany. This constitutes a taxable roundtrip, intrastate service. The limousine operator makes a single charge for the entire trip. The charge is subject to the combined state and local tax rate applicable in city of Albany.

Gratuities

A mandatory charge for gratuities is taxable unless all of the following conditions are met: (1) the gratuity charge is separately stated on the bill, invoice, or other statement given to the customer, (2) the charge is specifically designated as a gratuity, and (3) the service provider pays the entire amount of the charge to the driver. If a passenger gives a gratuity directly to the driver voluntarily, that is not a charge for transportation service and is not subject to sales tax.

Purchases by transportation service providers

Vehicles and services to the vehicles

When a transportation service provider purchases a vehicle for use in its business, it must pay state and local sales or compensating use taxes on that purchase. Likewise, if the service

provider purchases maintenance or repair services or parts for the vehicle, those purchases are also subject to sales tax.

Purchase of transportation services for resale

A vendor of transportation can purchase transportation service for resale from another vendor of transportation service, in appropriate circumstances. For example, if a base purchases a service from another provider (the base “farms out” a call), the base can purchase that service for resale, in which case the base does not pay sales tax to the other service provider. To do so, the purchaser must be registered for sales tax purposes and must give the vendor from which it purchases the service a properly completed Form ST-120, *Resale Certificate*. In that case, no sales tax is due on that purchase.

Example 7: Company A is registered for sales tax purposes. It has a customer who wants to be driven by limousine to an airport. However, Company A's limousines are already busy with other customers. Company A asks Company B, another limousine operator, to pick up A's customer and drive the customer to the airport. Company A charges its customer for the transportation service and also charges the sales tax due on the service charge. After B provides the service to A's customer, B submits a bill to A for transporting A's customer. Because A purchased B's service for resale to A's customer, A is not required to pay sales tax to B. Instead, A gives B a resale certificate when it pays B's bill.

QEZE purchases of transportation services

A qualified empire zone enterprise (QEZE) must pay tax on its purchase of taxable transportation services, and it cannot apply for a refund or credit of the tax it paid on those services. Nor can it use a QEZE exempt purchase certificate, Form ST-121.6, *New York State Sales and Use Tax Qualified Empire Zone Enterprise (QEZE) Exempt Purchase Certificate*, to purchase these services exempt.

Exempt organizations

Sales by exempt organizations

Transportation services sold by exempt organizations are either subject to tax or exempt, depending on the type of organization making the sale. Sales of transportation services are exempt from sales tax when sold by an organization described in Tax Law section 1116(a)(4), (5), or (7), such as a private not-for-profit school, or a church or charity, armed services post, health maintenance organization, or other exempt organization.

However, transportation services sold by other exempt organizations are taxable. For example, transportation services sold by New York State or by a New York county, city, town, village, or public corporation, or by an agency or instrumentality of any of them are taxable.

Purchases by exempt organizations

Transportation services are exempt from sales tax when purchased by any organization exempt from sales tax under section 1116(a) of the Sales Tax Law, including New York State and its municipalities and their agencies and instrumentalities. In each case, the exempt organization purchasing the service must establish its right to the exemption by submitting the proper exemption certificate to the vendor of the service (e.g., Form ST-119.1, *Exempt Organization Certification*, Form DTF-950, *Certificate of Sales Tax Exemption For Diplomatic Missions and Personnel Single Purchase Certificate*, or Form DTF-951, *Certificate of Sales Tax Exemption for Diplomatic Missions and Personnel Blanket Purchase Certificate*) or other required documentation. However, New York State, a New York municipality, or an agency or instrumentality of either of them must use its letterhead or purchase order to make an exempt purchase. A New York State government employee on official business can use Form AC-946, *Tax Exemption Certificate*, to purchase service exempt from tax in appropriate circumstances.

Other sales taxes due on the rental of a vehicle

Sales tax on the lease or rental of a livery vehicle to an unrelated driver

If a person leases or rents a livery vehicle to another person, that lease or rental is a separate sales transaction, and receipts from the lease or rental is subject to the sales tax on the retail sale of the vehicle as tangible personal property. This retail sales tax on the sale of tangible personal property is separate and apart from the sales tax on the sale of any transportation services that might also apply if the person who leases or rents the vehicle itself provides transportation services and the driver who rents the vehicle is an unrelated person. Thus, for example, when an owner rents a limousine to a person, the owner must collect sales tax from that person on the amount of the rental charge. If the driver is an unrelated person, then the owner of the livery vehicle must also collect the transportation service sales tax from the driver because (as previously described) the driver is also deemed to be the purchaser of the transportation service in these circumstances. These two sales taxes are on separate incidences of tax—the first is the lease or rental (sale) of the vehicle; the second is the deemed sale of the transportation service.

Taxes imposed on the lease or rental of a vehicle

The following taxes may apply to the lease or rental of vehicles used to provide transportations services:

- The lease or rental of a vehicle is subject to sales tax under Tax Law section 1105(a) which imposes sales tax on the on the sale, including lease or rental, of tangible personal property. A motor vehicle is tangible personal property.

- The lease or rental of a passenger car for a term of less than one year is subject to a special state-wide tax of 6% under Tax Law section 1160 (see TSB-M-09(1)S, *Increase in the Special Tax on the Rental of Passenger Cars*). In addition, passenger cars leased or rented for a term of less than one year within the Metropolitan Commuter Transportation District (MCTD) are also subject to a special supplemental tax of 5% under Tax Law section 1166(a). The MCTD consists of New York City (Bronx, Kings, New York, Queens, and Richmond counties) and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester (see TSB-M-09(6)S, *Special Supplemental Tax on the Rental of Passenger Cars Within the Metropolitan Commuter Transportation District*).
- The long-term lease of a motor vehicle with a gross vehicle weight of 10,000 pounds or less is subject to accelerated payment of sales tax under Tax Law section 1111(i). The law requires upfront collection of sales tax on any lease for a term of one year or more (see Notice N-92-11, *Accelerated Sales Tax Collections on Certain Leases for a Term of One Year or More*).

Refund of charge for transportation service

If a vendor of transportation service charges its customer the wrong amount for its service, or if the vendor charges for service that it ends up not providing, and the vendor returns the charge, or a portion of the charge, to the customer, the vendor must also refund to the customer the amount of the sales tax collected on the amount of the returned charge. If the vendor has already remitted the tax to the Tax Department, it may apply for a credit or refund for the amount of the tax refunded to the customer that it already paid to the Tax Department. The vendor must file Form AU-11, *Application for Credit or Refund of Sales and Use Tax*, together with proof of repayment of tax to its customer. When the application for credit has been filed, the vendor may immediately take a credit on its next return and attach a copy of the application indicating on the application it has already applied for the credit. Vendors must keep detailed records of their charges and of any refunds of charges or refunds of tax to their customers.

Bad debt refund or credit

If a vendor of transportation services determines that an amount due from its customer is uncollectible and the vendor has actually charged off the amount for federal income tax purposes, the vendor may apply for a refund or credit in the amount of the tax that the vendor paid with its tax return on such amount. Only the amount attributable to the sales tax imposed and remitted by the vendor to the department remaining unpaid by the customer is allowable as a refund or credit.

To claim a credit or refund, the vendor must file an application for credit or refund with the department, using Form AU-11, *Application for Credit or Refund of Sales and Use Tax*, together with documentation to support the claim. When an application for credit has been filed, the vendor may immediately take a credit on its next return and attach a copy of the application indicating on the application if it has already applied for the credit.

Requirements to adjust meters on a timely basis

Any municipality or public corporation that establishes or regulates black car, limousine, or other motor vehicle service fares must adjust those fares to include State and local sales taxes imposed on the fares. The municipality or public corporation must also require that any meters or other devices in the vehicles that measure fares be adjusted to include the correct amount of these taxes. In addition, any person selling taxable transportation services must adjust the meters or other devices in the vehicles, in a timely manner, so that they reflect any change in the rates of the taxes. Neither the failure of a municipal or other public corporation to adjust fares, nor the failure of any person to adjust the meters or devices, will relieve a person from the obligation to collect and pay or pay over the taxes timely, at the correct combined rate.

Transitional rules

The new sales tax applies to transportation services provided on or after June 1, 2009, even if the transportation services were contracted for earlier than June 1, 2009. If a transportation service is sold based on a period that begins prior to June 1, 2009, and ends after June 1, 2009, the receipt subject to sales tax is based on the ratio of the number of days falling within the period of time between June 1, 2009, and the end of the period, and the total number of days in the entire period.

Example 8: Company A has a contract to provide limousine service to its customer for the period from May 29 to June 4, 2009. At the end of the contract period Company A is charged a single amount of \$1,200. All of the services originated in New York State and were intrastate. The amount of the charge for transportation service during the period that is subject to sales tax is computed as follows:

$$\frac{\text{Taxable portion of period June 1 - June 4 = 4 days}}{\text{Total period May 29 - June 4 = 7 days}} = 4/7 \times \$1,200 = \$685.71 \text{ is subject to tax}$$

Additional examples

The following examples illustrate the new law:

- 9. A passenger is picked up by a limousine service in Schenectady, New York, and dropped off at John F. Kennedy International Airport in Jamaica, New York. The limousine operator imposes extra charges for luggage and parkway tolls. Although the limousine drives through New Jersey to get to the airport, the service begins and ends in New York and, therefore is an intrastate service and the charges for the service are subject to tax. In addition, the extra charges for the luggage and tolls are part of the receipt for the service and, therefore, are subject to tax as well. The passenger also voluntarily gives the driver a gratuity of \$20. Since the gratuity is voluntary, it is not a charge for transportation service and is not included in the*

- receipt subject to sales tax. Tax must be collected from the customer at the combined state and local rate for Schenectady County since that is where the transportation service began.*
10. *A passenger is picked up by limousine service in Buffalo, New York, and dropped off in Erie, Pennsylvania. Since the transportation service is an interstate service, the service is not subject to sales tax.*
 11. *A reservation is made in advance to take a passenger by black car (dispatched from a central facility) from Morristown, New Jersey, to John F. Kennedy International Airport in Jamaica, New York, on April 1, 2010, and then to pick up the same passenger at the same airport and return to Morristown on April 8, 2010. This is an interstate transportation service, not subject to sales tax.*
 12. *A 14-passenger limousine coach picks up students from their homes in Syracuse, New York, to transport them to their high school prom in Syracuse. The limousine does not wait at the prom. After the prom, the limousine transports each of the students to their homes at different locations within Syracuse. The limousine company imposes a 15% mandatory gratuity. Since the service is an intrastate transportation service, it is subject to sales tax. Because the service began in Syracuse, sales tax would be collected at the combined state and local rate applicable in Syracuse. (The 15% mandatory gratuity must be included in the receipt subject to sales tax, unless the three conditions previously described on page 6 are met.)*
 13. *Parents of students from a high school in Hudson, New York, hire a charter bus with a seating capacity of 15 passengers (not including the driver) to take their teenagers to an amusement park in Lake George, New York, for the day. Since this service is provided by bus, it does not meet the definition of transportation service and is not subject to sales tax.*
 14. *A salesperson traveling for business in New York hires a taxicab to take her from John F. Kennedy International Airport to her business meeting in Manhattan. Taxicab service is not subject to the sales tax imposed on transportation services.*
 15. *Aunt M preplanned her funeral and arranged limousine transportation for the family on the day of the funeral. There is no sales tax on the charge for this service since transportation service in conjunction with a funeral is specifically excluded from taxable transportation service.*
 16. *A not-for-profit charitable organization that is exempt from sales tax under section 1116(a)(4) of the Tax Law provides transportation service for the elderly. The organization's charge for the transportation service is exempt from sales tax.*

17. *A diplomat who has received sales tax exempt status from the U. S. Office of Foreign Missions (OFM) hires a black car to pick him up from John F. Kennedy International Airport and take him to a meeting in New York City. Since OFM has certified the diplomat's sales tax exempt status, the charge to the diplomat is exempt.*
18. *A company hires a van to pick up its employees at their office in Albany, New York, and drive them to a seminar in Schenectady, New York, and then return them to the office in Albany after the seminar ends. The van holds 14 passengers (not including the driver). As an intrastate transportation service, the charge is taxable at the Albany County rate, where the service originated.*
19. *Mr. Bond has purchased several limousines. He has contracted with a local limousine company to provide him drivers to drive his vehicles on an hourly basis, as needed. The charge by the limousine company to Mr. Bond for the drivers' services is not a charge for transportation services and is not subject to sales tax.*

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.