

Sales Tax on Certain Transportation Services Amended to Exclude Livery Service Provided by an Affiliated Livery Vehicle in New York City

Chapter 57 of the Laws of 2010 amended the Tax Law to exclude charges for transportation services provided by *affiliated livery vehicles* wholly within New York City from the state and local sales taxes on transportation services. This amendment is retroactive to June 1, 2009. For general information relating to sales tax 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 the Sales Tax on Certain Transportation Services*.

For purposes of this new exclusion, *affiliated livery vehicle* means a for-hire motor vehicle with a seating capacity of up to six persons, including the driver, other than a black car or luxury limousine, that is authorized and licensed by the taxi and limousine commission of a city of one million or more to be dispatched by a livery base station located in such a city and regulated by such taxi and limousine commission. In addition, the charges for service provided by an affiliated livery vehicle must be on the basis of flat rate, time, mileage, or zones and not on a garage-to-garage basis. As used in this new provision, the term *luxury limousine* has the same meaning as *limousine* (see TSB-M-09(7)S, *Additional Guidance Relating to the Sales Tax on Certain Transportation Services*).

This new exclusion applies only to charges for transportation services that are performed by an affiliated livery vehicle wholly within New York City. Therefore, only charges for trips that begin and end in New York City are not subject to sales tax. Charges for services provided by an affiliated livery vehicle for trips that begin in New York City and end in a New York State locality outside New York City, or that begin in a New York State locality outside New York City but end in New York City, remain subject to sales tax. For purposes of the local sales tax imposed on transportation service, the sales tax is computed by using the tax rate for the jurisdiction where the service commenced. For example, if a ride commences in New York City and ends in Westchester County, New York City sales tax would be due on this transaction. Conversely, if a ride starts in Westchester County and ends in New York City, Westchester County sales tax would be due on this transaction.

Effective date

This amendment became law August 11, 2010, and is retroactive to June 1, 2009 (the original imposition date for sales tax on transportation services). Therefore, effective immediately, businesses collecting tax on services provided wholly within New York City may stop collecting sales tax on those services. Sales tax collected but not yet remitted to the Tax Department must either be returned to the customer or remitted to the department. The business may not keep sales tax money collected from customers on behalf of the department.

Filing a final sales tax return and surrendering your *Certificate of Authority*

A business whose only service is using an affiliated livery vehicle(s) to provide transportation services wholly within New York City is no longer required to be registered for sales tax purposes solely for providing that service. If that is the only service the business provides, it may file a final sales tax return and surrender its *Certificate of Authority*. In addition, the business must remit any sales tax collected and not previously remitted with the final sales tax return, unless it can prove that it returned the sales tax collected to the customer. For information on filing a final sales tax return and surrendering a *Certificate of Authority*, see Tax Bulletin *Filing a Final Sales Tax Return* (TB-ST-265) and Tax Bulletin *Amending or Surrendering a Certificate of Authority* (TB-ST-25). A business that uses an affiliated livery vehicle(s) to provide transportation services that remain subject to sales tax as described above must continue to be registered and must collect sales tax on these services.

Refund or credit rules

If a business was registered for sales tax purposes and remitted sales tax that was collected on its charges for livery service provided using an affiliated livery vehicle wholly within New York City after June 1, 2009, the business may be eligible for a credit or refund of sales tax previously remitted to the department. However, the business must be able to prove that it paid the tax to the department with its sales tax return and that it has returned to the customer the sales tax it collected from the customer. To apply for a credit or refund, the business would file Form AU-11, *Application for Credit or Refund of Sales and Use Tax*, together with proof of repayment of tax to its customer. Businesses must keep detailed records of their charges, tax collected on those charges, and refunds (if any) of tax to their customers.

Customers who paid tax to a livery service provider for service wholly within New York City on or after June 1, 2009, may apply to the livery company or to the Tax Department using Form AU-11 for a refund of tax paid. Customers that apply to the Tax Department for refunds must be able to prove that they paid the tax to a service provider, such as by submitting a receipt showing the date of the service, the amount paid, and the amount of tax collected by the service provider.

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.