



Summary of 2013 Budget Legislation and Other 2013 Legislation Affecting Sales and Use Taxes

This memorandum contains a summary of legislation enacted as part of the 2013-2014 New York State budget (Chapter 59 of the Laws of 2013) and certain other legislation enacted in calendar year 2013 affecting sales and use taxes. The following legislative changes are summarized in this memorandum:

2013 Budget legislation

- [Sales and use tax credit or refund related to the creation of the New York State Business Incubator and Innovation Hot Spot Support Act](#)
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- [Extension of the requirement to deposit sales tax into a separate bank account](#)
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Other 2013 legislation

- [Sales tax credit or refund under the START-UP NY program](#)
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2013 Budget legislation

The provisions in Chapter 59 of the Laws of 2013 affecting sales and use taxes are described below.

Sales and use tax credit or refund related to the creation of the New York State Business Incubator and Innovation Hot Spot Support Act

Part C of Chapter 59 of the Laws of 2013 created the New York State Business Incubator and Innovation Hot Spot Support Act to support the growth of companies in the early stages of development. The Act will be administered by [Empire State Development](#) (ESD).

The new law authorizes ESD to designate entities as New York State incubators (incubators). In addition, ESD is authorized to designate five incubators as New York State innovation hot spots (innovation hot spots) in each of state fiscal years 2013-2014 and 2014-2015. These innovation hot spots can certify certain clients as qualified entities eligible for tax benefits under section 38 of the Tax Law. An incubator that is not designated as an innovation hot spot cannot certify any client as a qualified entity.

A qualified entity that is a tenant in, or is part of a virtual incubation program operated by, an innovation hot spot is eligible for certain tax benefits under this new law. These benefits include a credit or refund of the 4% state sales and use tax and the 3/8% tax imposed by the state in the Metropolitan Commuter Transportation District, on the purchase of tangible personal property, certain utility services, and other services taxable under section 1105(c) of the Tax Law.

The credit or refund will be allowed for 60 months beginning with the first full month after the qualified entity becomes a tenant in, or part of a virtual incubation program operated by, an innovation hot spot.

For further information on the New York State Business Incubator and Innovation Hot Spot Support Act and the tax benefits available under this new law, see [TSB-M-14\(1\)C, \(1\)I, \(2\)S](#), *New York State Business Incubator and Innovation Hot Spot Support Act*.

(Urban Development Corporation Act, section 16-v, Tax Law, sections 38 and 1119(d)(1))

Extension of electronic filing and electronic payment provisions

Part H of Chapter 59 of the Laws of 2013 extended the revised electronic filing and electronic payment mandate provisions established under Part U of Chapter 61 of the Laws of 2011. These provisions have been extended through December 31, 2016. The provisions were set to expire on December 31, 2013.

The provisions apply to tax preparers and individual taxpayers using tax software to prepare any authorized tax documents.

Tax preparer e-file mandate. A tax preparer who prepares authorized tax documents for more than ten different taxpayers during any calendar year, and in a succeeding year prepares one or more authorized tax documents using tax software, must file all authorized tax documents electronically in that succeeding tax year as well as each year thereafter. These provisions apply to tax preparers who first become subject to the mandate for calendar years beginning on or after January 1, 2012, but before January 1, 2017.

Note: Tax preparers who met a prior e-file mandate requirement in a previous year must still electronically file all authorized tax documents in succeeding tax years if they prepare one or more returns using tax software.

For the most up-to-date information on the e-file mandate for tax preparers, visit the Tax Department's [Web site](#).

Extension of the requirement to deposit sales tax into a separate bank account

Part H of Chapter 59 of the Laws of 2013 extended until December 31, 2016, the provisions in the Tax Law that allow the Tax Department to require certain persons to deposit the sales tax they collect into a separate account. If a person fails to establish a separate account when notified by the Tax Department to do so, the Tax Department is authorized to require the person to file a bond. In addition, the Tax Department may revoke or suspend the person's *Certificate of Authority* for failure to comply with these requirements.

(Tax Law sections 1134(a)(4)(A), and 1137(e))

Changes to how Industrial Development Agencies and Authorities (IDAs) provide sales tax benefits

Part J of Chapter 59 of the Laws of 2013 amended the General Municipal Law and the Public Authorities Law to make several reforms to how Industrial Development Agencies and Authorities (IDAs) provide sales and use tax exemption benefits. The reforms include:

- new recordkeeping and reporting requirements related to providing state sales and use tax benefits;
- new requirements related to the recapture and payment over to the state of certain state sales and use tax benefits; and
- limitations on the extent to which an IDA may provide financial assistance to facilities that are primarily engaged in making retail sales.

For a comprehensive description of the reforms enacted by this new law, see [TSB-M-14\(1.1\)S](#), *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*.

(General Municipal Law, sections 810(3), 854(4), 862(2), 874(9)(b), 875, 883; Public Authorities Law, sections 1963(4)(b), 1963-b, 2326(4)(b), and 2326-a)

Exemption for natural gas that will be converted into compressed natural gas used in the engine of a motor vehicle

Part K of Chapter 59 of the Laws of 2013 amended the Tax Law to exempt from sales and use tax natural gas that is purchased in an uncompressed state and that will be converted into compressed natural gas and used or sold for use or consumption directly and exclusively in the engine of a motor vehicle.

This exemption applies to the sale and use of such natural gas that occurs on or after June 1, 2013. This exemption will remain in effect through August 31, 2014.

For further information on this new exemption, see [TSB-M-13\(3\)S](#), *Sales and Use Tax Exemption for Natural Gas that will be Converted to Compressed Natural Gas for Use or Consumption in Motor Vehicles*.

(Tax Law, section 1115(a)(42))

Suspension of drivers' licenses of persons with delinquent tax liabilities

Part P of Chapter 59 of the Laws of 2013 authorized the Tax Department and the Department of Motor Vehicles (DMV) to enter into a written agreement to establish a program to suspend the drivers' licenses of taxpayers with substantial unpaid tax liabilities. This program aids in the collection of past-due state tax liabilities by allowing the suspension of drivers' licenses of taxpayers with past-due tax liabilities of \$10,000 or more. However, certain taxpayers are not subject to the license suspension program, including taxpayers holding a commercial driver's license and taxpayers making certain child support payments or combined child and spousal support payments.

For purposes of the license suspension program, the following definitions apply:

- *Tax liabilities* means any tax, surcharge, or fee administered by the Commissioner of Taxation and Finance, or any penalty or interest due on these amounts owed by an individual with a New York State driver's license.
- *Driver's license* means any license issued by the DMV, except for a commercial driver's license as defined in section 501-a of the Vehicle and Traffic Law.

- *Past-due tax liabilities* means any tax liability or liabilities that have become fixed and final, such that the taxpayer no longer has any right to administrative or judicial review.

The Tax Department and the DMV are authorized to share certain taxpayer identifying information (such as names, addresses, and social security numbers) in order to carry out the enforcement provisions of the program. Neither the Tax Department nor the DMV, however, may re-disclose any information to any other entity or person, except to inform the taxpayer that his or her driver's license has been suspended.

The Tax Department will provide taxpayers who have been identified as having past-due tax liabilities of \$10,000 or more with a letter that includes a consolidated statement of the tax liabilities. This letter will include information about how the taxpayer can pay the liabilities and/or request additional information. The letter also serves as notification that the taxpayer's driver's license will be suspended by the DMV if the taxpayer fails to act.

An individual who receives this notification letter **must** do one of the following to avoid the suspension of his or her driver's license:

- Pay the past-due amount in full or enter into an installment payment agreement (IPA)¹ or other payment arrangement satisfactory to the Commissioner of Taxation and Finance to satisfy the past-due tax liabilities.
- Provide the Tax Department with proof of any one of the following:
 - The individual to whom the notification was sent is not the taxpayer with the past-due liability.
 - The past-due tax liability has been satisfied.
 - The taxpayer's wages are being garnished by the Tax Department for the payment of the past-due tax liabilities at issue.
 - The taxpayer's wages are being garnished by the Tax Department (or the taxpayer has a satisfactory payment arrangement with a support collection unit in place) for the payment of child support or combined child and spousal support.
 - The taxpayer's driver's license is a commercial driver's license as defined in Vehicle and Traffic Law section 501-a.
 - The taxpayer is seeking relief from joint and several liability under Tax Law section 654 (innocent spouse relief).
 - Enforcement of the past-due tax liabilities has been stayed by the filing of a petition under the Bankruptcy Code (Title 11 of the United States Code).

A taxpayer has 60 days to respond to the Tax Department letter. If the taxpayer fails to respond in one of the ways described above by the date specified, the Tax Department will notify

¹ If a taxpayer enters into an IPA to avoid suspension, and then fails to comply with the terms of the IPA more than once in a twelve-month period, the department may immediately notify the DMV to suspend the driver's license of the taxpayer.

the DMV to proceed with the license suspension. The DMV is authorized to suspend the taxpayer's driver's license within 15 days of receiving notification from the Tax Department.

Once a taxpayer's driver's license is suspended, he or she will have no right to a court action, proceeding, hearing, or appeal with the DMV regarding the suspension. The suspension will remain in effect until the DMV receives Tax Department notification that the taxpayer has satisfied his or her past-due tax liabilities or has entered into an IPA or other payment arrangement satisfactory to the Commissioner of Taxation and Finance. However, a taxpayer who has his or her driver's license suspended under this program may apply for a restricted use license under section 530(5-b) of the Vehicle and Traffic Law.

Note: If a taxpayer is not currently licensed, the suspension will apply to the privilege of obtaining a New York State driver's license.

Any taxpayer whose driver's license has been suspended for past-due tax liabilities is still subject to all other provisions of the Tax Law with regard to enforcement and collection activity except for the garnishment of wages.

(Tax Law section 171-v and Vehicle and Traffic Law sections 510(4-f), 511(7), and 530(5-b))

Income executions (wage garnishments)

Part Q of Chapter 59 of the Laws of 2013 added new section 174-c to the Tax Law. The new law allows the Commissioner of Taxation and Finance to serve income executions (wage garnishments) without filing a warrant in the office of a county clerk or with the Department of State.

Under section 174-c, any individual taxpayer liable for the payment of any tax or other imposition administered by the Tax Department, including applicable penalties and interest, who fails to pay (or collect and pay over) the tax or imposition within 21 calendar days after a notice and demand is issued (10 business days if the amount due is \$100,000 or more), is subject to an income execution without a warrant being filed.

For purposes of serving an income execution under section 174-c, the following rules will apply:

- The commissioner will be deemed to have obtained a judgment against the individual for the tax or other imposition administered by the commissioner, including any additions to tax, penalties, and interest in connection with the tax or other imposition, and there will be a lien on the amount of the individual's income that may be garnished.
- The commissioner must serve the income execution within 6 years after the first date a warrant could be filed under section 174-b of the Tax Law. (Generally the day after the last day specified for payment by a *Notice and Demand* is the first date a warrant can be filed).

- When serving an income execution without filing a warrant, the commissioner will follow the procedures set forth in section 5231 of the Civil Practice Law and Rules (CPLR), with references to *sheriff* to be read as referring to the *Commissioner of Taxation and Finance* or the *Tax Department*.

The income execution will first be sent to the taxpayer and will specify:

- the name and address of the employer or person from whom the taxpayer is receiving or will receive money,
- the amount of the money to be received,
- the frequency of the payment of the money, and
- the amount of the installments to be collected.

The income execution will allow the taxpayer no less than 21 days from the date of the income execution to begin making the installment payments identified in the income execution on his or her own. If the taxpayer fails to make the installment payments on time, or defaults in making any of the installment payments as specified, the income execution will be served directly on the employer or person from whom the taxpayer is receiving or will receive money.

An income execution served under section 174-c of the Tax Law will continue to be in effect until the liability is satisfied, or until 20 years from the first date a warrant could have been filed by the commissioner, whether or not a warrant is filed. In addition, the commissioner must electronically file with the Department of State a list of the names of taxpayers who have been served with an income execution notice under section 174-c of the Tax Law. This list must be filed on a quarterly or more frequent basis, and will also include the names of taxpayers whose income executions have been canceled or discharged during the period. This list will also be published on the Department of State's Web site.

Note: Nothing in section 174-c of the Tax Law will prevent the commissioner from timely filing a warrant in order to pursue any enforcement or collection method authorized under Article 52 of the CPLR, including the serving of income executions.

The new law applies to income execution notices issued on or after March 28, 2013, and before April 1, 2015.

(Tax Law section 174-c)

Other 2013 legislation

Legislation enacted in 2013 affecting sales and use taxes that was not included in the budget legislation enacted by Chapter 59 of the Laws of 2013 is described below.

Sales tax credit or refund under the START-UP NY program

Chapter 68 of the Laws of 2013 enacted legislation referred to as the START-UP NY program. The START-UP NY program provides tax benefits to approved businesses that locate in vacant space or land of approved New York State public and private colleges and universities, approved strategic state assets, and New York State incubators affiliated with private universities or colleges that are designated as tax-free NY areas. These tax benefits can include a sales tax credit or refund as discussed below.

An approved business that is located in a tax-free NY area is eligible for a credit or refund of New York state and local sales and use taxes, including the 3/8% tax imposed by the state in the Metropolitan Commuter Transportation District, on the purchase of tangible personal property, utility services, and services taxable under section 1105(c) of the Tax Law.

In addition, a sales tax credit or refund is available for certain purchases of tangible personal property by contractors, subcontractors and repairmen that is used in constructing, improving, maintaining, servicing or repairing real property of an approved business that is located in a tax-free NY area.

The credit or refund will be allowed for 120 consecutive months beginning with the month during which the business locates in the tax-free NY area.

The sales tax credit or refund under the START-UP NY Program applies to the sale or use of eligible tangible personal property and services that occur in sales tax quarters beginning on or after March 1, 2014.

For further information on the tax benefits available under the START-UP NY program including the sales tax credit or refund available under the program, see [TSB-M-13\(7\)C, \(6\)I, \(11\)M, \(1\)MCTMT, \(7\)S](#), *SUNY Tax-free Areas to Revitalize and Transform Upstate New York Program (START-UP NY program)*.

(Article 21 of the Economic Development Law, Tax Law sections 39, 1119(d)(1),(2))

Amendment to the definition of *recorded programs* for purposes of the sales and use tax exemption for broadcasters

Chapter 229 of the Laws of 2013 amended the definition of *recorded programs* for purposes of the sales and use tax exemption for machinery, equipment, and other items of tangible personal property that are used by broadcasters directly and predominantly in the production of live or recorded programs. The exemption also applies to certain services rendered to a broadcaster in connection with its broadcasting business.

The purpose of the amendment is to provide that the term *recorded programs* includes programs contained on any medium, including a digital format.

For further information on the sales and use tax exemptions provided to radio and television broadcasters under sections 1115(a)(38) and 1115(aa) of the Tax Law, see [TSB-M-00\(6\)S](#), *Summary of the 2000 Sales and Compensating Use Tax Budget Legislation and Publication 825*, *A Guide to Sales Tax in New York State for Broadcasters* available on the Tax Department's Web site.

This amendment became effective July 31, 2013.

(Tax Law section 1115(a)(38)(C)(iii))

New farm cidery license and exclusion for farm cideries from filing an annual sales tax information return

Chapter 384 of the Laws of 2013 amended the Alcoholic Beverage Control Law, the Agriculture and Markets Law, and the Tax Law to allow for the establishment and licensure of farm cideries. The Chapter 384 amendments to the Alcoholic Beverage Control Law include definitions of cidery and farm cidery and describe the authorized activities of a farm cidery.

Farm cideries that produce cider as defined in section 3(7-b)(a) of the Alcoholic Beverage Control Law, may apply for a farm cidery license under section 58-c of the Alcoholic Beverage Control Law.

The Tax Law mandates that alcoholic beverage wholesalers must file annual sales tax information returns.² Chapter 384 amended the Tax Law to exclude businesses operating under a farm cidery license issued under section 58-c of the Alcoholic Beverage Control Law from this filing requirement.

² See [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*.

The amendments to the Tax Law are effective for annual returns due on or after March 20, 2014.

(Tax Law section 1136(i)(1)(C))

Sales tax exemption for water and sewer service line protection programs sold to owners of residential property

Chapter 400 of the Laws of 2013 amended the Tax Law to provide an exemption from state and local sales taxes, including the 3/8% sales tax imposed by the state in the Metropolitan Commuter Transportation District, for receipts and fees associated with water and sewer service line protection programs sold to owners of residential property.

This new law applies to water and sewer service line protection programs sold on or after October 21, 2013.

The Tax Department will be issuing a guidance document that will provide additional information on this exemption.

(Tax Law section 1115(ii))

Amendments related to financial assistance provided by the City of Auburn Industrial Development Authority

Chapter 304 of the Laws of 2013 amended the Public Authorities Law (PAL) to place restrictions on the financial assistance (including state and local sales and use tax exemption benefits and other tax exemption benefits) the city of Auburn Industrial Development Authority (IDA) may provide to facilities that are primarily engaged in making retail sales. Specifically, these amendments conform the financial assistance provisions in the PAL relating to the city of Auburn IDA to the amendments enacted by Chapter 59 of the Laws of 2013 to the General Municipal Law (GML) that placed restrictions on the extent to which an IDA under the GML may provide financial assistance to facilities that are primarily engaged in making retail sales.

For further information on this amendment see [TSB-M-14\(1.1\)S](#), *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*.

This new law became effective August 30, 2013.

(Public Authorities Law, sections 2306, 2334)

Sales and use tax exemption for vehicles purchased out-of-state by members of the military

Chapter 534 of the Laws of 2013 amended the Tax Law to provide an exemption from New York State and local sales and use taxes, including the 3/8% sales tax imposed by the state in the Metropolitan Commuter Transportation District, for the use in New York State of motor

vehicles purchased outside of New York State by a person while he or she was in the military service of the United States. In order to qualify for the exemption, the purchaser must provide proof that tax was paid to another state, whether by the purchaser or the seller.

This amendment took effect on December 18, 2013.

The Tax Department will be issuing a guidance document that will provide additional information on this exemption.

(Tax Law, section 1115(a)(14-a))

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.