

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-85(11.1)S
Sales Tax
August 26, 1985

Chapters 65 and 765 of the Laws of 1985

Omnibus Tax Equity and Enforcement Act of 1985

In addition to the amendments reported in TSB-M-85(11)S, dated August 12, 1985, the following sections have also been amended by Chapters 65 and 765 of the Laws of 1985.

Effective September 1, 1985

Section 1131(1) - adds to the list of "persons required to collect tax":

- (1) any director of a corporation or of a dissolved corporation
and
- (2) any employee of a partnership or of an individual proprietorship who, as such officer, director or employee, is under a duty to act for such corporation, partnership or individual proprietorship in complying with any requirement of Article 28.

Section 1132(c) - provides that a vendor who makes a sale which is tax exempt, either as a sale for resale or under the provisions of sections 1115 and 1116 of the tax law, must have a properly completed supporting document in his possession no later than 90 days after delivery of the property sold or service rendered, or the sale will be deemed a taxable sale at retail. Where the supporting document requires the inclusion of the purchaser's registration certificate number or other identification number, the purchaser must certify that his Certificate of Authority has not been suspended or revoked, and has not expired. A timely received certificate or document which contains a deficiency will be considered satisfactory if such deficiency is subsequently corrected.

Furthermore, the Tax Commission may suspend or revoke a Direct Payment Permit if the permit holder fails to comply with the provisions of Article 28 or the sales and use tax regulations pertaining to Article 28. (Notice and hearing provisions applicable to revocation and suspension of Certificates of Authority under section 1134 shall apply.)

If the Tax Commission furnishes vendors with information identifying those persons whose certificates of authority or direct payment permits are invalid due to expiration, suspension or revocation, and if the vendor accepts an exemption certificate or direct payment permit from a purchaser who has been so listed by the Tax Commission as holding an invalid Certificate of Authority or permit, the receipts from such sale will be deemed taxable.

Section 1134(a)(1) - provides that every person who has had its certificate of authority revoked, shall file a certificate of registration in those instances where a certificate of registration is generally required to be filed under section 1134(a)(1).

Also, the Tax Commission shall include with the Certificate of Registration information regarding notice requirements of a purchaser, transferee or assignee and his liability for payment of taxes pursuant to section 1141(c) of the Tax Law, and general information about the sales and use tax, including information on recordkeeping, returns and payments, notification requirements and forms, The Certificate of Registration may be amended according to rules and regulations of the Tax Commission.

Section 1134(a)(2) - states that, except as otherwise provided in section 1145, the Tax Commission shall issue a Certificate of Authority within 5 days of receipt of a properly filed Certificate of Registration. The Certificate of Authority may be issued for a specified term of not less than three years, subject to renewal, in accordance with rules of the Tax Commission. Certificates of Authority will be subject to suspension or revocation, as provided for in section 1145, whether or not they were issued for a specified term.

Certificates of Authority must be prominently displayed in the place of the registrant's business to which it applies. A registrant who has no regular place of business, shall attach such certificate to each of his carts, stands, trucks or other merchandising devices. The Certificate of Authority and any duplicate are non-assignable and nontransferable and shall be surrendered to the Tax Commission immediately upon cessation of business at the place named, unless the registrant amends the Certificate of Registration in accordance with Tax Commission rules.

Section 1134(a)(4)(A) - provides that the Tax Commission may revoke or suspend a Certificate of Authority and all its duplicates, where a holder of the Certificate of Authority, on or after September 1, 1985, (1) willfully fails to file a report or return required by Article 28, (2) willfully files, causes to be filed, gives or causes to be given a false report, return, certificate or affidavit required by Article 28, (3) willfully fails to comply with the provisions of section 1137(e)(2) and (3) for securing taxes due under Article 28, (4) willfully fails to collect, truthfully account for or pay over any tax pursuant to Articles 28 and 29, or (5) has been convicted of a crime under the Tax Law, where the conviction occurred no more than one year prior to the date of revocation or suspension.

Section 1134(a)(4)(B) - provides that the Tax Commission may refuse to issue a Certificate of Authority when it is found that: (1) any tax determined due under the Tax Law, from an applicant for a Certificate of Authority, has not been paid in full, (2) sales tax due from a responsible officer, director, partner or employee of the applicant (as a person responsible to collect tax) has not been paid, (3) the applicant has been convicted of a crime, under the Tax Law, within one year from the date of application, (4) a responsible officer, director, partner or employee of the applicant, in his capacity as a person required to collect tax, has been convicted of a crime, under the Tax Law, within one year from the date of application, (5) a shareholder of a corporation applying for a Certificate of Authority, who owns more than half the shares of stock in such corporation (entitling him to vote for the election of directors or trustees), also owned more than half the shares of stock of another corporation at a time when any tax due under the Tax Law or the New York City earnings tax was finally determined to be due from such corporation and remains unpaid, or where such corporation was convicted of a crime under the Tax Law within one year from the date of application for a Certificate of Authority, or (6) a Certificate of Authority previously issued to the applicant was revoked or suspended within one year from the date of the current application.

Section 1134(a)(4)(C) - provides that in the instances where the Tax Commission may suspend, revoke or refuse to issue a Certificate of Authority, it may allow conditional retention or issuance of a Certificate of Authority upon the filing, by the taxpayer, of a bond or a deposit of tax sufficient to protect revenues, in accordance with section 1137(e)(2) or (3),

Section 1134(a)(4)(D) - provides that a notice of proposed revocation, suspension or refusal to issue a Certificate of Authority shall be given to a holder of, or applicant for, a Certificate of Authority in the same manner prescribed by the Tax Law for a notice of determination of tax; and all the provisions applicable to the notice of determination of tax shall apply insofar as possible, with such modifications as may be necessary.

A notice of proposed refusal to issue a Certificate of Authority shall be issued within five days after timely application (section 1134(a)(1)).

A hearing will be scheduled upon timely application for same. Within three months from such application (determined with regard to any postponements made at the applicant's request) the Tax Commission shall issue either a notice of refusal or a Certificate of Authority. If the Tax Commission fails to issue a notice of refusal within such period, it must issue a Certificate of Authority at the end of this period.

A notice of proposed revocation or suspension must be given to a person within three years from the date of the act or omission described in section 1134(a)(4)(A), except that in cases of falsity or fraud, such notice may be issued anytime. All such notices shall state that the suspension, revocation or refusal to issue may be challenged through a hearing process and that the petition for such challenge must be filed with the Tax Commission within ninety days after the giving of such notice.

Section 1134(a)(4)(E) - provides that after a person has received notice from the Tax commission of suspension or revocation of, or refusal to issue, a Certificate of Authority, and such notice has become final, or after a person's Certificate of Authority has expired and no renewal or new Certificate of Authority has been obtained, such person is prohibited from engaging in any business in New York State for which a Certificate of Authority is required. If, despite this prohibition, the person continues to conduct business, the Tax Commission may bring an action to halt such business activities.

Section 1134(a)(6) - provides that the Tax Commission, if it deems necessary for proper administration, may require every person who holds a Certificate of Authority to file a new Certificate of Registration in such form and at such time as the Tax Commission may prescribe, and to surrender the Certificate of Authority being held. Within the time prescribed by the Tax Commission, the Commission will issue a new Certificate of Authority to each registrant and a duplicate thereof for each additional place of business of such registrant. The new Certificate of Authority will be issued without charge to the registrant.

The Tax Commission may require such filing and such surrender not more often than once every three years.

Section 1145(a)(1)(i) - provides that any person who fails to file a return with no tax due, is liable for a \$50. penalty. It further provides that failure to file a tax due return within 1 through 60 days of the due date subjects a person to a penalty of 10% of the tax due for the 1st month, plus an additional 1% of the tax due for each month thereafter, not to exceed 30% in the aggregate. However, in no instance may the penalty be less than \$50.

If a person is more than 60 days late, the penalty will be the greatest of: (1) 10% of the tax due for the first month, plus 1% of the tax due for each month thereafter, not to exceed 30% in the aggregate, or (2) the lesser of \$100. or 100% of the tax required to be shown on the return, or (3) \$50. The amount of tax required to be shown on the return will be reduced by the amount of any part of the tax which is paid on or before the due date for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

These provisions apply to taxes required to be paid and returns required to be filed on or after September 1, 1985, both with regard to extensions.

Section 1145(a)(1)(ii) - provides that if any amount of tax is not paid on or before the last date prescribed in Article 28 for payment, interest on such amount at the rate of 12% per annum or at the rate set by the Tax Commission, whichever is greater, will be payable for the period from such last date to the date paid, regardless of any granted extension of time for payment. Interest, under this subparagraph, of less than \$1. shall not be paid.

Section 1145(a)(1)(vi) - provides that any person who omits an amount of State and local sales and use tax in excess of 25% of the amount of such tax required to be shown on the return will be subject to a penalty equal to 10% of the amount omitted. The amount of the omission will be reduced by that portion of the omission which is attributable to tax treatment for which there is or was substantial authority for such treatment; also, any item for which the relevant facts affecting its tax treatment are adequately disclosed in the return or a statement attached to the return. If the Tax Commission determines such omission was due to reasonable cause and not willful neglect, it will remit all of such penalty. The penalty provided for in this subparagraph will not apply to any estimated tax return required by section 1137-A of the Tax Law.

This section applies to returns required to be filed, with regard to extensions, on or after September 1, 1985.

Section 1145(a)(2) - provides that where failure to pay or pay over any tax due is attributable to fraud, in lieu of the penalties and interest provided for in sections 1145(a)(1)(i) & (ii), there will be added to the tax (1) a penalty of 50% of the amount of tax due; (2) interest on such unpaid tax at the greater of either the rate of 12% per annum or the interest rate set by the Tax Commission for the period beginning on the due date for payment of the tax (without regard to any extension of time for payment) and ending on the day on which such tax is paid; plus (3) an amount equal to 50% of the interest payable (pursuant to this section) on the portion of the unpaid tax attributable to fraud for the period beginning on the due date for payment of the tax (without regard to any extensions of time for payment) and ending on the date the amount of tax due is finally determined or, if earlier, on the day on which such tax is paid. This provision applies to taxes due or unpaid on or after September 1, 1985.

Section 1145(a)(3)(i) - provides that any person required to obtain a Certificate of Authority who, without possessing a valid Certificate of Authority, sells tangible personal property or services subject to tax, receives amusement charges or operates a hotel, purchases or sells tangible personal property for resale, or sells automotive fuel shall be subject to a penalty in an amount not exceeding \$500. for the first day on which such sales or purchases are made, plus an amount

not exceeding \$200. For each subsequent day on which such sales or purchases are made, not to exceed \$10,000. in the aggregate. This is in addition to any other penalty imposed under the Tax Law.

Section 1145(a)(3)(ii) - provides that any person who fails to surrender a Certificate of Authority when a notice of revocation or suspension becomes final shall be subject to a penalty in an amount not to exceed \$500. for the first day of such failure, plus a penalty in an amount not to exceed \$200. for each subsequent day of failure, not to exceed \$10,000. in the aggregate. This is in addition to any other penalty imposed in the Tax Law.

Section 1145(a)(3)(iii) - provides that if any person required to file for a Certificate of Authority takes possession of or pays for business assets requiring notification to the Tax Commission (section 1141(c) of the Tax Law) without filing for a Certificate of Registration, a penalty in an amount not exceeding \$200. shall be imposed. This is in addition to any other penalty imposed in the Tax Law.

Section 1145(a)(3)(iv) - provides that if the Tax Commission determines that any failure or act described in section 1145(a)(3) was due to reasonable cause and not due to willful neglect, it may remit all or part of such penalty.

Section 1145(a)(4) - provides that any person required to display a Certificate of Authority who fails to do so, in accordance with the Tax Law or Regulations, shall be subject to a penalty of \$50. This is in addition to any other penalty imposed in the Tax Law. If the Tax Commission determines such failure was due to reasonable cause and not due to willful neglect, it may remit all or part of such penalty.

Section 1145(a)(5) - provides that any person who issues a false or fraudulent resale or other exemption certificate or document with intent to evade tax shall be subject to: (1) a penalty of one hundred percent of the tax that would have been due had there not been a misuse of such certificate or document, and (2) a penalty of \$50. for each such certificate or document. This is in addition to any other penalty imposed in the Tax Law.

Section 1145(a)(6) - provides that the Tax Commission shall promulgate rules and regulations as to what constitutes reasonable cause, for purposes of section 1145(a).

Section 1147(b) - provides statutory limitations for assessing a vendor who files a return and willfully omits an amount in excess of twenty-five percent from gross sales or taxable sales or who files a false or fraudulent return. Definitions of the terms "gross sales" and "taxable sales",

for purposes of this subdivision, are:

Gross sales - all sales of tangible personal property or services, every rent and every amusement charge, whether subject to tax or not.

Taxable sales - all receipts, rents and amusement charges subject to the sales taxes imposed by Article 28 or pursuant to Article 29 of the Tax Law.

It further provides that where a purchaser furnishes a vendor with a false or fraudulent certificate of resale or other exemption document with intent to evade the tax, the tax may be assessed against such purchaser at any time.

This provision applies to returns required to be filed (with regard to extensions) on or after September 1, 1985.