

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

TSB-M-85(11)S
Sales Tax
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Chapters 65 and 765 of the Laws of 1985
Omnibus Tax Equity and Enforcement Act of 1985

The following are sections of the Sales and Use Tax Law which have been amended by Chapters 65 and 765 of the Laws of 1985, to take effect on April 17, 1985 and July 16, 1985. Additional memoranda will be forthcoming to cover the amendments in Chapters 65 and 765 which take effect September 1, 1985 and November 1, 1985.

Effective April 17, 1985

Section 1134(a)(6) - Paragraph (6) has been renumbered paragraph (5).

Section 1135 - The second unnumbered paragraph of subdivision (c) is now lettered subdivision (d). It provides that all records required by section 1135 of the tax law are to be made available for inspection and examination at any time, upon demand by the Tax Commission, and should be retained for a period of three years unless the Tax Commission consents to their destruction within that period or requires that they be kept longer. These records may be kept within the meaning of section 1135 when reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic or other process which actually reproduces the original record.

Section 1137(e)(3) - provides that when any person fails to collect, truthfully account for, pay over the tax, or file returns required by Article 28, and the Tax Commission in its discretion deems it necessary to protect revenues, it may require a taxpayer to collect and deposit collected taxes with a banking institution approved by the Tax Commission, such deposits to be made to a separate account in trust for and payable to the Tax Commission. It is no longer necessary for the Tax Commission to find in writing that the financial condition of the taxpayer may impair his ability to pay over the tax (emphasis supplied).

Section 1138(a)(3)(B) - provides that the liability for tax, pursuant to section 1133(a) of the tax law, of any officer, director or employee of a corporation or of a dissolved corporation, member or employee of a partnership or employee of an individual proprietorship who as such officer, director, employee or member is under a duty to act for such corporation, partnership or individual proprietorship in complying with any requirement of this article for the tax imposed, collected or required to be collected, or for the tax required to be paid or paid over to the Tax Commission under Article 28, and the amount of such liability shall be determined by the Tax Commission in accordance with paragraphs 1 and 2 of section 1138(a). This is true, whether or not a return is filed under Article 28, whether or not such return when filed is incorrect or insufficient, or where the tax shown due on the return has not been paid or has not been paid in full.

Unless such person applies to the Tax Commission for a hearing, within 90 days after the Tax Commission has made such determination, the determination shall finally and irrevocably fix the tax and the liability for the tax. The Tax Commission may, of its own motion, redetermine such determination. When the Commission determines that the amount of tax claimed due is erroneous or excessive, in whole or in part, it shall determine the amount of tax properly due. Furthermore, the Commission may, of its own motion, abate any part of the tax determined erroneous or excessive, whether or not finally or irrevocably fixed.

Section 1138(a)(4) - provides that an Article 78 proceeding brought to review a determination made under section 1138(a)(3)(B) of the tax law may be instituted without depositing an undertaking with the Tax Commission.

Section 1142(9) - provides that the interest rate be set, by regulation, for purposes of (rather than paid pursuant to) sections 1139 and 1145 (emphasis supplied).

Section 1145(a)(7) - clarifies that the penalties and interest referred to in this paragraph are those provided for in subdivision (a) of section 1145 and provides that such interest shall be compounded daily.

Section 1146(a) - states that secrecy provisions of the tax law do not prohibit the Tax Commission from identifying to vendors: (1) those persons holding Certificates of Authority, (2) those persons whose Certificates of Authority have been suspended or revoked, or have expired, (3) those persons who have requested a Certificate of Authority and been refused by the Tax Commission, and (4) those persons whose Direct Payment Permits have been suspended or revoked by the Tax Commission.

Effective July 16, 1985

Section 1141(b) - provides that unless a second copy of the docketed warrant is filed in the Department of State, the resulting lien will not apply to personal property.

Note: Chapter 765 of the Laws of 1985 adds a new Section 6 to Article 28 of the Tax Law, providing that it shall be sufficient to file with the Department of State a record of the fact of the issuance of the warrant, including the name and last known address of the person against whom the warrant is issued, and the amount of the tax liability, including penalties and interest.