

SALES TAX EXEMPTION FOR
TRACTORS, TRAILERS & SEMITRAILERS

The regulations relating to the exemption from sales and use tax for tractors, trailers and semitrailers were amended effective January 29, 1988. The amended regulations differ in several respects from the regulations that were in effect from January 1, 1988 through January 28, 1988. The most significant changes are:

- the regulations previously required that property purchased for the equipping, maintenance or repair of a qualifying tractor, trailer or semitrailer had to be installed on the vehicle by or through the seller at the time of purchase to get the exemption from sales and use tax, while the amended regulations permit such property to be purchased tax-exempt even when it is not installed by the seller;
- the regulations previously required that property removed from a qualifying vehicle for maintenance or repair had to be reinstalled by the provider of the service for the service to be exempt from sales and use tax, while the amended regulations do not require that the property be reinstalled by the provider of the service; and
- the regulations previously provided that the special refund provisions contained in section 1139(g) of the Tax Law apply to tax paid on any qualifying purchase made on or after July 1, 1987, including purchases made on or after January 1, 1988, while the amended regulations provide that section 1139(g) applies only to tax paid on purchases made during the period July 1, 1987 through December 31, 1987.

TSB-M-87(16)S, dated December 18, 1987, reflects the regulations that were in effect from January 1, 1988 through January 28, 1988. It should be used as a guideline for determining the taxability of all purchases of vehicles, property and services made during that period. TSB-M-87(16)S also outlines the refund or credit provisions contained in section 1139(g). As stated above, the amended regulations provide that section 1139(g) will apply only to purchases made from July 1, 1987 through December 31, 1987. TSB-M-87(16)S should, therefore, be disregarded to the extent that it discusses the refund or credit of taxes paid on qualifying purchases made on or after January 1, 1988.

This memorandum, which supplements TSB-M-87(16)S, outlines the rules contained in the amended regulations and should be used as a guideline for determining the taxability of all purchases of vehicles, property and services made on or after January 29, 1988. It should also be used to determine the refund or credit provisions that apply to taxes paid on qualifying purchases made on or after January 1, 1988.

Exempt Purchases

A qualifying purchase, for purposes of the exemptions from sales and use tax under sections 1115(a)(26) and 1115(g) of the Tax Law, is a purchase of any of the following:

- a tractor, trailer or semitrailer, as such term is defined under Article 1 of the Vehicle and Traffic Law, used in combination where the gross vehicle weight of such combination exceeds 26,000 pounds;
- all property that the qualifying tractor, trailer or semitrailer is originally equipped with, including sleeper units, built-in stereo radios, built-in tool boxes, hand tools, splash guards, wind deflectors, road flares and road reflectors;
- property installed on a qualifying tractor, trailer or semitrailer for the purpose of equipping, maintaining or repairing the vehicle;
- installation, maintenance or repair services performed on a qualifying tractor, trailer or semitrailer; and
- installation, maintenance or repair services performed on property that is installed on a qualifying tractor, trailer or semitrailer for the purpose of equipping, maintaining or repairing the vehicle.

Purchases of property that is installed on a qualifying tractor, trailer or semitrailer by or through the seller for the purpose of equipping, maintaining or repairing the vehicle are exempt from tax. Purchases, including bulk purchases, of uninstalled property that is to be used for the equipping, maintenance or repair of a qualifying vehicle are also exempt from tax. The term "property" for these purposes includes:

- replacement parts such as tires, batteries, headlights, horns and fenders;
- vehicle fluids (oil, brake fluid, transmission fluid, coolant, etc.) other than motor fuel or diesel motor fuel;
- filters;
- windshield wiper blades and windshield washer fluid;
- anti-theft devices;
- safety decals;

- wind deflectors;
- splash guards;
- cargo restraint systems;
- tractor hose retrievers; and
- dollies which convert semitrailers to trailers.

A taxpayer who is registered in New York State as a sales tax vendor may make tax-exempt bulk purchases of uninstalled property for qualifying and non-qualifying vehicles if, at the time of purchase, the taxpayer does not know whether the property will be installed on an exempt vehicle or used in some other manner. The taxpayer must pay use tax when property that was purchased tax exempt is used for a non-exempt purpose. The use tax is due with the monthly, quarterly or annual sales and use tax return that the taxpayer files for the period in which the non-exempt use occurred. If the taxpayer knows that the property will be used on a non-qualifying vehicle, then the taxpayer is required to pay tax at the time of purchase.

A taxpayer who is not registered as a sales tax vendor may also make tax-exempt bulk purchases of uninstalled property, but only when the property is purchased for installation on a qualifying tractor, trailer or semitrailer for its equipping, maintenance or repair. If, at the time of purchase, the taxpayer cannot determine whether the property will be used on a qualifying or non-qualifying vehicle, the taxpayer must pay tax on the purchase and claim a refund of the tax paid on any property that is later installed on a qualifying tractor, trailer or semitrailer to equip, maintain or repair the vehicle. The taxpayer is required to pay use tax on any property purchased tax exempt but used on a non-qualifying vehicle. Form ST-130, *New York State and Local Use Tax Return*, must be filed and the use tax paid within 20 days of the date the non-exempt use occurred.

The same rules that apply to purchases of uninstalled property apply to purchases of services to uninstalled property. That is, when property is removed from a vehicle to be serviced, the service is exempt from tax if the property is going to be reinstalled on a qualifying vehicle for its equipping, maintenance or repair. If the taxpayer is a registered sales tax vendor and the taxpayer does not know whether the property will be installed on a qualifying vehicle or used in some other manner, then the services may be purchased tax exempt. Use tax must be paid on any services to property which is later installed on a non-qualifying vehicle. If the taxpayer is not a registered sales tax vendor, then services to property may be purchased tax-exempt only if the taxpayer knows that the property will be reinstalled on a qualifying vehicle for its equipping, maintenance or repair. When tax is paid on services to property and that property is later installed on a qualifying vehicle for its equipping, maintenance or repair, then the taxpayer may request a refund of such taxes.

Use tax will be due with respect to any purchase of services to property when that property is later installed on a non-qualifying vehicle.

Exemption Certificate

Form ST-121.1, *Exemption Certificate for Tractors, Trailers or Semi-Trailers*, must be used to make tax-exempt purchases of vehicles, property or services. The certificate must be properly completed and presented to the seller within 90 days of the date the qualifying purchase is made. To be properly completed, the certificate must be dated and contain all required information relating to the exempt purchase. If the purchaser is a registered sales tax vendor, the certificate must contain the purchaser's sales tax vendor identification number (the number of the purchaser's Certificate of Authority), and the purchaser's highway use tax identification number, if that number is different from the purchaser's sales tax identification number. If the purchaser is not a registered sales tax vendor, then the certificate must show the purchaser's highway use tax identification number or, in the case of a household goods mover, the Interstate Commerce Commission (ICC) identification number or Department of Transportation (DOT) identification number.

Penalty and Interest Provisions

A taxpayer who intentionally issues a false or fraudulent exemption certificate with the intent to evade tax is subject to the following:

- a penalty equal to 100% of the tax due;
- a penalty of \$50 for each false or fraudulent certificate issued;
- a fine of up to \$10,000 (\$20,000 in the case of a corporation); and
- in the case of a registered sales tax vendor, possible revocation of the taxpayer's Certificate of Authority.

When a taxpayer issues a false or fraudulent exemption certificate with intent to evade tax, an assessment for the tax can be issued to that taxpayer at any time.

A taxpayer who fails to file a return or pay any tax due on time is subject to a penalty equal to 10% of the tax due for the first month, plus 1% of the tax due for each additional month or fraction of a month the return is late, not to exceed a total of 30%. If, however, a return is not filed and/or the tax is not paid within 60 days of the date it is due, a minimum penalty applies. The minimum penalty is equal to the lesser of \$100 or 100% of the tax due. In the case of a taxpayer who is required to register as a sales tax vendor, in no event will the minimum penalty for failure to file a return on time be less than \$50. This is true regardless of the amount of time the return is late, and regardless of whether or not any tax is due.

Interest will be charged on any tax not paid on time as provided for in section 1145(a)(ii) of the Tax Law. Interest will be charged from the due date of the payment (determined without regard to any extensions of time), to the date payment is made.

Refund/Credit Provisions

A refund or credit of taxes paid on qualifying purchases made on or after January 1, 1988 may be applied for at any time after the tax is paid. Any applications for refund or credit of these taxes will be processed under the general provisions of section 1139 of the Tax Law.

Form AU-II, *Application for Credit or Refund of State and Local Sales or Use Tax*, must be used to apply for a refund or credit of taxes paid on a qualifying purchase. In addition to the information requested in the instructions for Form AU-ii, the refund or credit application must also include the following:

- the gross vehicle weight as defined below, and
- the highway use tax identification number of the purchaser *and* the highway use tax permit number of the vehicle.*

*For household goods movers only: The Interstate Commerce Commission number or the Department of Transportation number may be used instead of the highway use tax identification and permit numbers.

An application for refund or credit must be filed in processable form within three years of the date the tax was payable. The application will be considered to be in processable form only if it contains all required information and is accompanied by all supporting documentation. Applications should be sent to:

New York State Tax Department
Central Office Audit Bureau - Sales Tax
W.A. Harriman Campus, Building #9
Albany, New York 12227

Credits for these taxes may be claimed on a sales tax return only after Form AU-11.6, *Credit Voucher for State and Local Sales and Use Tax*, has been issued. The credit voucher must be attached to the sales tax return on which the credit is being claimed.

Recordkeeping Requirements

Purchasers and vendors are required to maintain records that support any exemption from tax for a transaction that would otherwise be taxable. Section 533.2 of the sales and use tax regulations

provides rules relating to recordkeeping requirements. Additional recordkeeping rules apply to the exemption from tax for qualifying purchases of property and services related to exempt tractors, trailers or semitrailers as discussed below.

When a taxpayer makes bulk purchases of uninstalled property without paying sales or use tax on the purchases, the taxpayer must keep records that show the use of all such property, whether it was installed on a qualifying vehicle or used in some other manner. The taxpayer's records must contain enough information to identify the specific vehicle on which the property was installed. The taxpayer's records must also show exactly what the qualifying purchase was (the specific parts and/or supplies purchased), when the property was used and, as stated before, the specific vehicle the property was used on. If the taxpayer's records do not contain enough information to substantiate that property which was purchased tax exempt was used in an exempt manner, it will be presumed that use tax is due with respect to that property.

Vendors who perform installation, maintenance or repair services on a qualifying tractor, trailer or semitrailer must record enough information on the sales invoice so that the vehicle on which the services were performed can be identified. For example, the invoice may show the highway use tax permit number if the vehicle is a tractor, or the registration/license plate number if the vehicle is a trailer. In addition, the invoice must contain the name of the business entity on whose behalf the purchase is being made, and the name of the authorized representative making the purchase. To substantiate the exemption from tax for a qualifying purchase, the vendor must keep a properly completed exemption certificate on file, and maintain a recordkeeping system by which sales made for exempt purposes can be associated with these certificates.

Nonqualifying Purchases

Certain purchases are not eligible for the exemption from, or a refund or credit of, sales and use taxes. These include purchases of:

- trucks;
- mobile homes and/or factory manufactured homes;
- "tractors" used exclusively in the transport of mobile homes;
- tractors, trailers or semitrailers which, when used in combination, have a gross vehicle weight of 26,000 pounds or less;
- motor fuel and/or diesel motor fuel;
- shop equipment, including service jacks, tire changers, battery chargers, parts washers, truck/tractor washers, work stands and wheel balancers;

- property that is not installed on a qualifying tractor, trailer or semitrailer (other than that sold as part of the original equipment of the vehicle), such as hand tools, road flares and road reflectors;
- parts and supplies that are used in servicing a qualifying tractor, trailer or semitrailer but which are not installed on the vehicle;
- services, other than installation, maintenance or repair services, performed on a qualifying tractor, trailer or semitrailer, or qualifying property installed on such vehicle.

Definitions

Gross Vehicle Weight - the unloaded weight of the vehicle plus:

- the unloaded weight of the heaviest motor vehicle, trailer, semitrailer, dolly or other device to be used in combination with such vehicle, and
- the weight of the maximum load, exclusive of the weight of the driver and passengers, that may be carried or drawn by such vehicle.

"Unloaded weight" is the actual weight of the vehicle including all equipment necessary for the vehicle to function as a vehicle, all equipment necessary for the safety of the vehicle, all equipment permanently attached to the vehicle, all equipment used exclusively for the protection of the load carried by the vehicle, and all equipment used exclusively for the loading or unloading of the vehicle.

Purchase - Any transaction (exchange, barter, rental, lease or license to use or consume) in which there is a transfer of title or possession, or both, of tangible personal property for a consideration.

Semitrailer - Any trailer which is so designed that when operated the forward end of its body or chassis rests upon the body or chassis of the towing vehicle.

Tractor - A motor vehicle designed and used as the power unit in combination with a semitrailer or trailer, or two such trailers in tandem. Any such motor vehicle shall not carry cargo except that a tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the power unit.

Trailer - Any vehicle not propelled by its own power, drawn on the public highways by a motor vehicle (as defined in section 125 of the Vehicle and Traffic Law), except for motorcycle sidecars, vehicles being towed by a nonrigid support and vehicles designed and primarily used for other purposes and only occasionally drawn by such a motor vehicle.