

REVISED INTEREST RATES FOR OVERPAYMENTS  
AND UNDERPAYMENTS OF SALES AND USE TAX

As a result of amendments to Sections 1142 and 1145 of the New York State Sales and Use Tax Law, the method used to determine the rate of interest charged by the State on underpayments of sales or use tax, and the method used to determine the rate of interest paid by the State on overpayments of sales or use tax changed September 1, 1989. In addition, interest rates are now subject to revision on a quarterly basis.

Interest Charged on Underpayments

On September 1, 1989, a revised formula took effect for the purpose of determining the amount of interest to be paid or assessed on underpayments of sales or use tax. The interest rate for underpayments (which include late payments) is the sum of the federal short-term rate, as established by the United States Secretary of the Treasury, (rounded to the nearest full percent ) plus an additional three (3) percentage points. In the event the sum of the federal short term rate plus three percent is less than twelve percent, the assessed interest must be set at 12% per annum as required by section 1145(a)(1)(ii) of the Tax Law. However, if facts from a protest of the assessment show that the underpayment of tax resulted from reasonable cause\*\*, the interest rate assessed on such underpayment will equal the sum of the federal short term rate plus 3% even if that sum is less than 12%.

The federal short-term rate from the month of April 1989 was used as the basis for determining the rate of interest to be charged on underpayments of sales or use taxes that were due or remained unpaid during the month of September 1989. In the months following September 1989, the federal short-term rate to be used in determining the rate of interest to charge on underpayments of sales and use taxes due and unpaid in the calendar quarters after September 1989, is the rate established by the Secretary of the Treasury in the first month of the calendar quarter preceding the calendar quarter in which the underpaid sales and use tax becomes due. In other words, the federal short-term rate for July, will be used as the basis for setting the interest rate for the period October 1, - December 31; the federal rate for October will be used for the period January 1, - March 31; the federal rate of January for April 1, - June 30; and the federal rate of April for July 1, - September 30.

\*One-half percents will be rounded to the next highest full percent (eg.  $6\frac{1}{2}\% = 7\%$ )

\*\*See Sales Tax Regulation Section 536.5 as amended 9/30/87 for circumstances that may constitute "Reasonable Cause".

For all sales or use taxes that remain unpaid on or after September 1, 1989 the interest payable on such unpaid taxes will be computed using those rates in effect for each quarterly period in which the liability is owed, until such liability is paid in full.

Example: A sales and use tax return reporting tax collected for the period ended August 31, 1989, (due September 20, 1989) is filed without remittance. The vendor later remits the tax on January 4, 1990. An interest charge for late payment is assessed on the unpaid tax from the date the tax was due to the date it was paid. During September 21 - 30, 1989, interest accumulated on the unpaid tax at the rate established for the month of September (12%). Beginning October 1, 1989 and ending December 31, 1989, the rate of interest assessed is based on the rate in effect for that period (12%), and beginning January 1, 1990 the rate of interest assessed will coincide with the rate established for that period.

#### Interest Paid on Overpayments

Except in those circumstances where interest is not paid on certain refunds of sales or use tax (see Sales Tax Regulation Section 534.2(e)(3)), beginning September 1, 1989, the interest rate to be paid on overpayments (including erroneous payments) will be based upon the federal short-term rate as determined by the U.S. Secretary of the Treasury plus two percentage points.

Unlike the interest due on underpayments, there is no statutory minimum interest rate payable on overpayments (unless the tax department fails to establish an interest rate). The interest rate for overpayments occurring during the month of September 1989 is determined by use of the April 1989 federal short-term rate. Interest rates on overpayments occurring for periods after September 1989 are determined using the same federal short term rate that is used to determine the interest rates for underpayments for corresponding periods (see Interest Charged on Underpayments, this memorandum). For all sales or use taxes that remain overpaid on and after September 1, 1989 the interest rate on such overpaid taxes will be the rates in effect for each quarterly period up until the date tax is refunded.

#### General

Interest for overpayments and underpayments is compounded daily. These rates of interest are subject to change each calendar quarter, and each interest rate will be published in the state register no later than twenty days preceding the first day of the calendar quarter for which such rate is effective. In the event that the department fails to set a rate of interest, whether it be for overpayments, underpayments, or both, the interest rate is set by statute at six percent per annum.