

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

TSB-M-92(1)S  
Sales Tax  
March 27, 1992

1991 AMENDMENTS TO THE SALES TAX LAW

ARTICLE 28

<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1101(b)(3)	166-160	N-91-34 TSB-M-92(2)S	<u>Receipt - Defined</u> As amended, provides that any charges by the vendor to the purchaser for shipping or delivery, that are included on the bill rendered to such purchaser for a taxable sale, are part of the receipt subject to sales tax. Effective September 1, 1991.
1101(b)(5)	166-154	N-91-34	<u>Sale, Selling, Purchase - Defined</u> As amended, provides that with respect to computer software, sale, selling, or purchase includes merely the right to reproduce. Effective September 1, 1991.
1101(b)(6)	166-154	N-91-34	<u>Tangible Personal Property - Defined</u> As amended, provides that tangible personal property includes pre-written computer software. Effective September 1, 1991.
1101(b)(13)	166-17	N-91-34 TSB-M-91(13)S	<u>Telephone Answering Service - Defined</u> As added, defines telephone answering service as a service that consists of taking messages by telephone and transmitting such messages to the purchaser of the service or at the purchaser's direction, but does not include such service if it is merely an incidental element of a different or other service purchased by the customer. Effective September 1, 1991.

\* For further information see applicable Memoranda, Notice or Publication.

<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1101(b)(14)	166-155	N-91-34	<u>Pre-written Computer Software - Defined</u> As added, defines pre-written computer software as computer software which is not designed and developed to the specifications of a specific purchaser. Combining two or more pre-written programs, or portions thereof, does not cause the combination to be other than pre-written software. Pre-written software includes software designed and developed to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Pre-written software that is modified or enhanced to the specifications of a specific customer remains pre-written software except to the extent of the modification or enhancement, provided the vendor separately states a reasonable charge for such modification or enhancement on the bill or statement of price given to the customer. Effective September 1, 1991.
1105(b)	166-18	N-91-34 TSB-M-91(13)S	<u>Imposition - Telephone Answering Services</u> As amended, imposes a sales tax on the receipts from every sale, other than sales for resale, of a telephone answering service. Effective September 1, 1991.
1110	166-19	N-91-34 TSB-M-91(13)S	<u>Use Tax - Imposition</u> As amended, adds telephone answering service to the types of services which are subject to use tax. Effective September 1, 1991.

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<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1110	166-158	N-91-34	<u>Use Tax</u> As amended, subdivides existing text into subdivisions lettered (a) thru (f).Provides an exception from the use tax for computer software developed and used by its author or creator unless that author or creator offers such software or software of a similar kind for sale in the regular course of business. Adds a new paragraph, (g) which provides that for the purpose of computing a use tax on computer software that is used by its author or creator, the tax shall be at the rate of 4% of the consideration given for the blank medium, such as disks or tapes, used in conjunction with such software. Effective September 1, 1991.
1110	166-161	N-91-34	<u>Use Tax</u> As amended, provides TSB-M-92(2)S that when calculating the amount of use tax, any charge made by the vendor to the user for shipping or delivery, that was included on the seller's bill rendered to the user must be included as part of the consideration given for the property or service that is subject to the use tax. Effective September 1, 1991.
1115(a)28	166-156	N-91-34	<u>Exemptions</u> As added, provides an exemption from the sales and use tax for computer software designed and developed to the specifications of a specific purchaser which is transferred directly or indirectly to a corporation which is a member of an affiliated group of corporations (within the

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			meaning of tax law section 208(17)(b)) if the transfer is not in pursuance of a plan having as its principal purpose the avoidance or evasion of sales or use tax, but excluding pre-written software available to be sold to customers in the ordinary course of the seller's business. Effective September 1, 1991.
1115(o)	166-157	N-91-34	<u>Exemptions</u> As added, provides that services which would be taxable under section 1105(c) or 1110 are exempt when performed on computer software. However, when such services are provided in conjunction with the sale of tangible personal property, any charge for that service will be exempt only when such charge is reasonable and separately stated on an invoice or other statement of price given to the purchaser. Effective September 1, 1991.
1118(11)	166-159		<u>Exemptions From Use Tax</u> As added, provides an exemption from use tax for the use of computer software which was not considered tangible personal property prior to September 1, 1991, and which was used by the purchaser, author, or other creator in this state prior to such date. Effective September 1, 1991.

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<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1131(4)	166-20		<u>Property and Services the Use of Which is Subject to Tax - Defined</u> As amended, includes within this statutory term all telephone answering service rendered to a person within the state, whether or not such services are performed within the state, the use of which is taxable under section 1110, or which will become subject to tax when such service is received by or comes into possession or control of such person within the state. Effective September 1, 1991.
1132(j)	166-137		<u>Collection of Tax</u> As added, provides that a person required to collect tax may accept a credit voucher and stub issued by an insurer pursuant to Article 15 of the Tax Law in lieu of collecting sales or compensating use tax with respect to the repair or replacement of the motor vehicle described on the voucher and stub. Effective September 1, 1991. However, it should be noted that a Supreme Court justice has held Article 15 of the Tax Law to be unconstitutional and has issued a preliminary injunction preventing its taking effect. Therefore, as of the date this memorandum goes to print insurers may not issue credit vouchers and stubs, and persons required to collect tax may not accept vouchers and stubs in lieu of collecting sales or use tax.
1154(a)(1)	166-138		<u>Registration - Technical Correction</u> As amended, provides that every person who is a sales

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			tax vendor solely by reason of tax law section 1101(b)(8)(i), clauses (D), (E) and (F), shall file a certificate of registration at least 20 days prior to commencing business. A reference was added, to cross reference section 341(f)(1) of Article 15 for the requirement of certain insurance companies to register under this section. Effective September 1, 1991. However such registration requirement for insurance companies, is not currently in effect because a Supreme Court Justice has held Article 15 to be unconstitutional and has issued a preliminary injunction preventing Article 15 from taking effect.
1135(a)(3)	166-138-a		<u>Records to be Kept</u> As added, provides that vendors who accept credit vouchers and stubs pursuant to Article 15 of the Tax Law must keep such voucher and stubs, as well as other records, in such form and for such period as the Commissioner may require. Effective September 1, 1991. However, since a preliminary injunction has prevented the implementation of Article 15, credit vouchers and stubs are not in use as of date of this memorandum.
1148	604-3		<u>Deposit and Disposition of Revenue</u> As amended, provides that certain taxes collected or received by the Tax Commissioner must be disposed of in the manner prescribed by section 92-e of the State Finance Law. Effective July 23, 1991.

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ARTICLE 28-A

<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1160(a)(2)	166-160-a	N-90-26	<u>Special Tax on Passenger Car Rentals</u> As amended, provides that for the purpose of computing the 5% compensating use tax imposed on the use of rented passenger cars the total consideration contracted to be given for the use of the property, includes any charges for shipping or delivery as described in section 1101(b)(3) of Article 28. Effective September 1, 1991.

ARTICLE 29

<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1202(c)	68-1		<u>Special Motor Vehicle Use Taxes Imposed by Counties</u> As added, provides that the Commissioner of Motor Vehicles or the Commissioner's agents may be required to administer and collect certain taxes imposed by a county, in accordance which section 1202(a). Effective April 22, 1991.
1202(c)	385-1		<u>Special Motor Vehicle Use Taxes Imposed by Counties</u> As amended, makes clear, among other things, that a motor vehicle use tax administered by the Commissioner of Motor Vehicles or the Commissioner's agents would not be imposed on the re-registration of motor vehicles. Effective April 22, 1991.

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<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1202-a(1)	398-1		<u>Onondaga County Hotel/Motel Tax</u> As amended, allows the County of Onondaga to enact local legislation to increase its hotel/motel tax rate to 5%. Effective August 1, 1991.
1202-g(1-b)	216-1		<u>City of Saratoga Springs Hotel/Motel Tax</u> As added, authorizes the City of Saratoga Springs to impose an additional tax (at a rate not to exceed 2%) on the daily rental charge to persons occupying rooms in hotels or motels within the city. Effective July 1, 1991.
1202-g(9)	216-2		<u>City of Saratoga Springs Hotel/Motel Tax</u> as amended, provides that revenues resulting from the tax imposed pursuant to section 1202-g(1-b) (see above) be paid to the City of Saratoga Springs Convention and Tourism Bureau, while revenues from the 1% tax imposed pursuant to the authority of section 1202-g(1-a) are to be deposited into the City's general fund. Effective July 1, 1991.
1202-h(1)	265-1		<u>Chemung County Hotel/Motel Tax</u> As amended, increases the maximum rate of tax the county is empowered to impose on the daily rental charge to persons occupying rooms in hotels or motels within the county from 2% to 4%. Effective July 3, 1991.

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<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1202-h(9)	265-1		<u>Chemung County Hotel/Motel Tax</u> As amended, provides for appropriation by the county legislature of hotel/motel tax revenue, and allows more than 75% of such revenue to be allocated for the promotion of regional tourism. Effective July 3, 1991.
1202-1	221-1		<u>Authorization for Ulster County Hotel/Motel Tax</u> As added, authorizes Ulster County to impose a tax (at a rate not to exceed 2%) on the daily rental charge to persons occupying rooms in hotels, motels and similar establishments within the county. Effective July 1, 1991.
1202-1	287-1		<u>Authorization for the City of Canandaigua to Impose Hotel/Motel Tax</u> As added, authorizes the City of Canandaigua to impose a tax (at a rate not to exceed 3%) on the daily rental charge to persons occupying rooms in hotels, motels and similar establishments within the city. Effective July 15, 1991.
1202-1	522-1		<u>Authorization for St. Lawrence County Hotel/Motel Tax</u> As added, authorizes St. Lawrence County to impose a tax (at a rate not to exceed 3%) on the daily rental charge to persons occupying rooms in hotels, motels and similar establishments within the county. Effective September 17, 1991.

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<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1202-1	598-1		<u>Authorization for the City of Niagara Falls to Impose Hotel/Motel Tax</u> As added, authorizes the City of Niagara Falls to impose a tax (at the rate of 4%) on the daily rental charge to persons occupying rooms in hotels, motels and similar establishments within the city. Effective September 21, 1991. The previous authorization for the city's hotel/motel tax (Chapter 969 of the Laws of 1973) is repealed.
1202-n	286-1		<u>Authorization for Rensselaer County Hotel/Motel Tax</u> As added, authorizes Rensselaer County to impose a tax (at a rate not to exceed 3%) on the daily rental charge to persons occupying rooms in hotels, motels and similar establishments within the county. Effective July 15, 1991.
1210	3-1	TSB-M-91(10)S	<u>Authorization for Erie County to Extend its Additional 1% Local Sales and Use Tax Rate</u> As amended, authorizes Erie County to adopt and amend local laws or resolutions imposing an additional 1% sales and compensating use tax (over and above its 3% tax) through February 29, 1992. Effective February 4, 1991.

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<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1210	271-2		<u>Authorization for Nassau County to Extend its Additional 3/4% Local Sales and Use Tax</u> As amended, authorizes Nassau County to adopt and amend local laws imposing an additional 3/4% sales and compensating use tax (over and above its 3% sales tax) through December 31, 1992. Effective July 15, 1991.
1210	272-8		<u>Authorization for Nassau County and Suffolk County to Impose an Additional 1/2% Local Sales and Use Tax</u> As amended, authorizes Nassau County and Suffolk County to adopt and amend local laws imposing an additional 1/2% sales tax (over and above their 3% tax and, in the case of Nassau County, its additional 3/4% tax) from September 1, 1991 through December 31, 1993. Effective July 15, 1991.
1210	273-2		<u>Authorization for Nassau County to Extend its Additional 3/4% Local Sales and Use Tax</u> As amended, authorizes Nassau County to adopt and amend local laws or resolutions imposing an additional 3/4% sales and compensating use tax (over and above its 3% tax) though December 31, 1993. Effective July 15, 1991.

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<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1210(b)(1)	166-21		<u>Taxes of Cities and Counties Administered by State Tax Commission</u> As amended, provides that where a city or county imposes a limited sales tax (one or more of the taxes described in sections 1105(b), (d), (e) and (f)) a compensating use tax shall also apply with respect to telephone answering services. Effective September 1, 1991.
1212-A	271-3		<u>Authorization for New York City to Extend its 4% Local Sales Tax on Certain Credit Services</u> As amended, extends New York City's authorization to impose its sales tax on credit rating, credit reporting, credit adjustment and credit collection services until December 31, 1992. Effective July 15, 1991.
1212-A	273-3		<u>Authorization for New York City to Extend its 4% Local Sales Tax on Certain Credit Services</u> As amended, extends New York City's authorization to impose its sales tax on credit rating, credit reporting, credit adjustment and credit collection services until December 31, 1993. Effective July 15, 1991.
1262(d)	399-1		<u>Disposition of Revenues in Niagara County</u> As amended, provides that the portion of net collections received by Niagara County shall be allocated to its cities and towns on the basis of the ratio which the population of each city or town bears to the population of all the cities and towns as determined by the latest federal census. Effective March 1, 1991.

<u>Tax Law Section</u>	<u>Chapter &amp; Bill Section</u>	<u>Reference*</u>	<u>Brief Summary</u>
1262-b	272-1		<u>Westchester County Property Tax Stabilization add Relief Act</u> Repealed prior Section 1262-b and added a new section which provides for a new method of distributing Westchester County sales and compensating use tax revenues to certain cities, towns, villages and school districts located within such county. Effective July 15, 1991.
1262-e	271-4		<u>Nassau County Local Government Assistance Program</u> As amended, continues the authorization for Nassau County to enact and establish a local government assistance program through the calender year beginning January 1, 1992. Effective July 15, 1991.
1262-e	273-4		<u>Nassau County Local Government Assistance Program</u> As amended, continues the authorization for Nassau County to enact and establish a local government assistance program through the calender year beginning January 1, 1993. Effective July 15,1991.

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