

STATEMENT OF REASONED JUSTIFICATION FOR MODIFICATION OF THE RULE

DEPARTMENT OF TAXATION AND FINANCE

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 7, 2009, issue of the State Register summaries of rules that were adopted by the Commissioner of Taxation and Finance in 1999 and 2004, and a notice of the department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. On December 30, 2008, this information was also posted on the department's web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>). Comments from the public concerning the continuation or modification of these rules were invited until February 23, 2009.

No public comments were received by the department concerning the 2004 amendments that were made to sections 528.7 and 528.22 of the Sales and Use Taxes Regulations as they pertained to farming and commercial horse boarding operations. These regulations were updated to reflect Chapter 407 of the Laws of 1999 and Chapters 63 and 472 of the Laws of 2000. The amendments were adopted by the commissioner on April 29, 2004, and published in the State Register on May 19, 2004, (TAF-10-04-00025-A).

This notwithstanding, the department determined as a result of its 2009 review that one of the provisions addressed in the 2004 amendments was dated and could not be continued without modification.

Section 1 of Part SS-1 of Chapter 57 of the Laws of 2008 amended section 1105(c)(3)(vi) of the Tax Law to repeal an obsolete and non-conforming provision concerning the now-terminated Municipal Assistance Corporation (MAC) taxes imposed in New York City by section 1107 of the Tax Law. The repealed provision provided that the exclusion from tax for services of installing, maintaining, servicing, and repairing exempt tangible personal property used predominantly either in farm production or in a commercial horse boarding operation (or both) did not apply to the taxes imposed in New York City by section 1107 of the Tax Law.

These services are now excluded from the local New York City sales and compensating use taxes imposed pursuant to the authority of section 1210 of the Tax Law, which had been suspended but immediately resumed after the termination of the section 1107 taxes.

Because section 528.7(a)(2) and Example 2 in this section of the regulations reference the section 1107 taxes and because Example 1 includes a reference to “upstate” that is no longer relevant, this rule is necessary to bring the regulations up to date in this regard.

It is noted that the remainder of the amendments made in 2004 to these regulations are valid and are continued without modification.