

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, subdivision (b) of section 1119, subdivisions (1) and (8) of section 1142, and section 1250 (not subdivided) of the Tax Law and pursuant to Part M of Chapter 60 of the Laws of 2004, the Commissioner of Taxation and Finance hereby makes and adopts as an emergency measure and proposes to make and adopt as a permanent rule the following amendments to the Sales and Use Taxes Regulations, as published in Subchapter A of Chapter IV of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, such amendments to read as follows:

Section 1. Paragraph (1) of subdivision (a) of section 534.4 of such regulations is amended to read as follows:

(1) Omnibus carrier. For purposes of this section, an "omnibus carrier" is a carrier [which] that provides local transit service in this State and [which] that operates pursuant to a certificate of public convenience and necessity issued by the Commissioner of Transportation of this State[,], or by [the Interstate Commerce Commission] a like officer or agency of the United States[,], or pursuant to a contract, franchise, or consent between the carrier and a city in this State having a population of more than one million inhabitants, or any agency of such city.

Section 2. Examples 2 and 3 of subdivision (a) of section 534.4 of such regulations are amended to read as follows:

“Example 2:” Buses of the Y Company operate[, pursuant to a certificate of the Interstate Commerce Commission,] from a terminal in A, a city within the State of New York, to a terminal in B, a city outside the

State of New York. Between the terminal in A and the State boundary, the buses do not pick up or discharge any passengers. These buses are not being operated in local transit service because they are not carrying passengers from one point in this State to another point in this State.

“Example 3:” Buses of the Z Company operate[, pursuant to a certificate of the Interstate Commerce Commission,] from a terminal in A to a station in B and proceed to a terminal in C. Cities A and C are in New York State and city B is outside of New York State. The distance between each of the cities along the route traveled is 20 miles. The company carries passengers from city A to cities B and C. The buses will be considered as operating in local transit service[,] since the total distance between points A and C is less than 75 miles, even though the distance from A to C includes some mileage outside of the State.

Section 3. Subparagraph (ii) of paragraph (2) of subdivision (b) of section 534.4 of such regulations is amended to read as follows:

(ii) The following lists of equipment and supplies are intended to indicate the scope of items applicable to omnibus carriers covered by section 1119(b) of the Tax Law. [Since it is recognized that these] These lists are not all inclusive[, questions about specific items not listed should be addressed to the Instructions and Interpretations Unit, Sales Tax Section, Technical Services Bureau, at the address listed in subdivision (b) of section 525.3 of this Title].

Section 4. A new section 534.10 is added to such regulations to read as follows:

Section 534.10 Refunds and credits for vessel operators engaged in local transit service. (Tax Law, section 1119(b)) (a) “Definitions.” (1) Vessel operator. For purposes of this section, a "vessel operator" is a person that operates a vessel used to provide local transit service in this State and that operates pursuant to a certificate of public convenience and necessity issued by the Commissioner of Transportation of this State or by a like officer or agency of the United States or pursuant to a contract, franchise, or consent between such person and a city in this State having a population of more than one million inhabitants, or any agency of such city.

(2) Vessel. For purposes of this section, a "vessel" is any type of watercraft with a seating capacity of more than 20 passengers that is used for the transportation on water of passengers for hire.

(3) Local transit service. (i) For purposes of this section, "local transit service" means a mass transit service provided by a vessel operator in which passengers are carried by a vessel from one point in this State to another point in this State and in performance of which the vessel:

“(a)” regularly picks up and discharges such passengers as scheduled, or at their convenience, at designated piers, slips, docks, or other landings along waterways, as distinguished from buildings or similar facilities used as terminals or stations;

“(b)” picks up and discharges passengers at terminals or stations, the distance between which is not more than 75 miles (5,280 feet per mile), measured along the route traveled by the vessel; or

“(c)” picks up and discharges passengers as described in both clauses “(a)” and “(b)” of this subparagraph.

(ii) Local transit service does not include charter, contract, excursion, sight-seeing, or other passenger service.

“Example 1:” A vessel operator uses vessels to provide mass transit service. The vessels pick up passengers from Terminal A and make scheduled landings at designated piers throughout the city to pick up and discharge passengers before returning to the terminal at the end of the day. The terminal and all of the landings are located in New York State. The vessels are operated in local transit service.

“Example 2:” A vessel operator uses vessels to provide mass transit service. The vessels pick up passengers from Terminal A, proceed to Stations B and C, and continue to Terminal D. All of these facilities and all of the mileage are located in New York State. The distance along the route traveled from A to B is 80 miles, from B to C is 80 miles, and from C to D is 60 miles. Between Terminal A and Station B, the vessels pick up and discharge passengers at designated piers along the waterway. However, they do not do this

between Stations B and C or between Station C and Terminal D. Between A and B and between C and D, these vessels are operated in local transit service. Between Stations B and C, however, the vessels are not operated in local transit service because they do not stop to pick up and discharge passengers and the facilities are more than 75 miles apart.

“Example 3:” A vessel operator uses vessels to provide mass transit service. The vessels transport passengers to and from Terminals A and B. Terminal A is located in New York State. Terminal B is located outside of the State. There are no scheduled landings at which to pick up or discharge passengers between Terminal A and the State boundary. These vessels are not being operated in local transit service because they are not carrying passengers from one point in this State to another point in this State.

“Example 4:” A vessel operator uses vessels to provide mass transit service. The vessels pick up passengers from Terminal A, proceed to Station B, and continue to Terminal C. Terminals A and C are located in New York State, and Station B is located outside of the State. The distance from Terminal A to Station B along the route traveled by the vessels is 20 miles, as is the distance from Station B to Terminal C. There are no scheduled landings made along the way. The vessels are operated in local transit service because the total distance traveled between Terminals A and C is less than 75 miles, even though the route from A to C includes some mileage outside of the State.

“Example 5:” Assume the facts in Example 4, except that the distance between Terminal A and Station B and between Station B and Terminal C is each 40 miles. The vessels are not operating in local transit service because the total distance traveled between Terminals A and C is greater than 75 miles. The fact that the vessel operator carries passengers from Terminal A to Station B, a distance of 40 miles, does not qualify as local transit service because it is not between two points within New York State.

(4) Vessel hours. For purposes of this section, "vessel hours" means the number of hours that all vessels are operated by a vessel operator in the performance of local transit service, plus the number of idle hours used

to reach the point at which such service begins and from the point at which such service terminates. Such hours include only those hours operated in this State.

(5) Total hours operated. For purposes of this section, "total hours operated" means the vessel hours computed pursuant to paragraph (4) of this subdivision, plus the number of hours used in charter, contract, excursion, sight-seeing, and all other passenger service, which hours are not included in the meaning of vessel hours. Such hours include only hours operated in this State.

(6) Local transit service percentage. (i) For purposes of this section, the "local transit service percentage" is the proportion that the vessel operator's "vessel hours" occurring in local transit service in this State, as defined in paragraph (4) of this subdivision, bear to the vessel operator's "total hours operated" in this State, as defined in paragraph (5) of this subdivision, for the calendar year immediately preceding the end of the quarterly return period ("i.e.," the last day of February, May, August, or November) to which a refund or credit under this section relates.

(ii) Special computation. For the first four quarterly return periods of a vessel operator that is not engaged in local transit service in the preceding calendar year, such vessel operator shall compute its local transit service percentage by using the proportion that such operator's vessel hours in local transit service in this State in the first three months of such operation bear to the operator's total hours operated in this State in such period.

"Example 6:" Under the facts of Example 4 set forth in paragraph (3) of this subdivision, the vessel operator operates its vessels for 15,000 hours. Of this number of hours: 4,000 hours are operated between Terminal A and Station B, of which 500 hours are operated outside of New York State; 4,000 hours are also operated between Station B and Terminal C, of which 500 hours are operated outside of the State; 3,500 hours are operated in charter services in New York State; and another 3,500 hours are operated in sight-seeing services in this State. The vessel hours in local transit service is 7,000 hours, which is composed of the 3,500

hours operated in this State between Terminal A and Station B (4,000 - 500) and the 3,500 hours operated in this State between Station B and Terminal C (4,000 - 500). Total hours operated is 14,000 hours, which is all of the hours operated except the 1,000 hours that were operated outside of the State. The local transit service percentage is 50 percent (the percentage that 7,000 vessel hours bear to 14,000 total hours operated).

(b) "Refund or credit of taxes paid." A vessel operator engaged in local transit service is allowed a refund or a credit of taxes paid on the sale to or use by the vessel operator of a "vessel," as defined in this section, and of parts, equipment, lubricants, diesel motor fuel, maintenance, servicing, and repair purchased and used in the operation of any such vessel by the operator.

(c) "Determination of the amount of refund or credit." The refund or credit is determined in accordance with the following table:

"If the local transit service percentage is:"	"The refund or credit is:"
Less than 10 percent	None
10 percent	10 percent of the combined State and local taxes paid
Greater than 10 percent, but less than 70 percent	10 percent plus the product of 1.5 times each whole percent in excess of 10 percent of the combined State and local taxes paid
70 percent or more	100 percent of the combined State and local taxes paid

"Example 7:" Under the facts of Example 6, as set forth in paragraph (6) of subdivision (a) of this section, it was determined that the local transit service percentage of the vessel operator is 50 percent. The vessel operator is entitled to a refund or credit of 70 percent of the combined State and local taxes paid on items eligible for such refund or credit, computed as follows:

Initial 10% = 10%

+ 40% x 1.5 = 60%

Total 70%

(d) “Application for refund or credit.” An application for refund or credit must be filed with the Department of Taxation and Finance and must cover a period of not less than three months. (For the administrative provisions on applying for a refund or credit, see section 534.2 of this Part).

(e) “Records to be maintained.” (1) A vessel operator must maintain records relating to its purchases and uses of all vessels and of all property and services described in subdivision (b) of this section. Each record must disclose:

(i) the vendor’s name;

(ii) the invoice number;

(iii) the invoice date;

(iv) the amount of the purchase;

(v) the amount of the sales or use tax paid; and

(vi) a brief description of the item(s) or service(s) purchased.

(2) A vessel operator must also maintain records that disclose:

(i) vessel hours operated in local transit service in this State;

(ii) vessel hours operated in this State in charter, contract, excursion, sight-seeing, and other passenger service not included in vessel hours; and

(iii) total hours operated within the State.

Section 5. This measure will take effect on the date that the Notice of Emergency Adoption and Proposed Rule Making is filed with the Secretary of State, and will apply to sales made, services rendered, and

uses occurring on or after December 1, 2004, in the manner provided in Part M of Chapter 60 of the Laws of 2004.

Dated: Albany, New York
November 29, 2004

Andrew S. Eristoff
Commissioner of Taxation and Finance