

## **Summary of the 2002 Sales and Compensating Use Tax Budget Legislation**

On May 29, 2002, Governor George E. Pataki signed Chapter 85 of the Laws of 2002 into law. This memorandum summarizes amendments to the Tax Law that are applicable to the State and local sales and compensating use (use) taxes.

### **Tax Amnesty**

Taxpayers with outstanding sales and use tax liabilities will be given a limited opportunity to settle their liabilities without penalties and with a reduction in the appropriate rate of interest.

Tax Amnesty will apply to sales and use tax liabilities for periods ending on or before February 28, 2001.

Amnesty participants can receive a waiver of certain penalties and a two percent interest rate reduction relating to tax liabilities that are eligible for Tax Amnesty. Beginning April 1, 2003, the interest rate applicable to all liabilities will increase by two percent for all taxpayers.

While most taxpayers will qualify for Tax Amnesty, the following restrictions limit eligibility:

- A taxpayer who was granted Tax Amnesty under either the 1994 or 1996-97 New York State Tax Amnesty programs is **not** eligible for those taxes for which Tax Amnesty was previously granted.
- Business taxpayers are not eligible for Tax Amnesty for sales and use tax liabilities if they have more than 500 employees, or their combined filing group had more than 500 employees, in the United States on the date of the application for Tax Amnesty.
- A taxpayer who has been convicted of a crime related to a tax for which Tax Amnesty is sought is **not** eligible for any period or assessment for that tax.
- A taxpayer is not eligible for Tax Amnesty for a tax and period in which the taxpayer is a party to a criminal investigation or pending criminal or civil litigation related to such tax and period. The taxpayer may apply for all other eligible taxes and periods which are **not** subject to an ongoing criminal investigation or pending criminal or civil litigation. In addition, the taxpayer may withdraw from civil litigation to obtain Tax Amnesty for the disputed assessment.

The Tax Amnesty program will begin sometime during the period April 1, 2002 - March 31, 2003. The exact period will be established by the Tax Department shortly. Tax Amnesty will also apply to personal income tax and certain corporate and excise taxes. Additional information, including relevant forms and instructions, will be available on the Department's Web site in the near future.

### **Qualified Empire Zone Enterprise (QEZE) exemptions**

The Tax Law was amended to make clarifications to the Empire Zones Program Act. The following is a summary of changes:

- The effective date for Empire Zone designations has been extended for tax purposes;
- the *sales and use tax benefit period* is defined;
- definitions of *employment test*, *employment number*, *taxable year*, *test date*, and *test year* have been amended; and
- property related to a motor vehicle is exempt if the motor vehicle is used predominantly in an Empire Zone.

For detailed information about these changes, please refer to TSB-M-02(5)S, *Qualified Empire Zone Enterprise (QEZE) Exemptions (Articles 28 and 29)*.

(Tax Law, sections 14 and 1115(z))

### **Sales and use tax on mobile telecommunications service**

The Tax Law was amended to provide that all receipts from any charges for mobile telecommunications services billed by a home service provider are sourced to the taxing jurisdiction where the mobile telecommunications customer's place of primary use is located, regardless of where the mobile telecommunications service originates, terminates or passes through. Thus, the mobile telecommunications customer's place of primary use is considered the point of delivery of the mobile telecommunications service, and controls both the tax incidence and the tax rate, for purposes of state and local sales and use taxes. The mobile telecommunications customer's *place of primary use* must be the customer's residential street address or primary business street address. These amendments conform the sales and use tax to the sourcing rules of the Federal Mobile Telecommunications Sourcing Act (Public Law 106-252).

The Tax Law was also amended to clarify that the total charge made by a home service provider of mobile telecommunications service for (a) commercial radio service, and property and services ancillary thereto, and (b) any other service and property provided by the home service provider to its mobile telecommunications customers, is subject to sales tax. However, where the home service provider uses an objective, reasonable, and verifiable standard to identify specific components of the property and services that comprise the total charge, then the home service provider may separately account for and quantify (break-out) the portion of the total charge attributable to each of the components.

These amendments are effective August 2, 2002.

For detailed information, please refer to TSB-M-02(4)C, (6)S, *Amendments Affecting the Application of the Sales and Use Tax and Excise Tax Imposed on Mobile Telecommunications Services*.

(Tax Law, sections 1101(b)(2), 1101(b)(24) through (28), 1105(b)(3), 1111(l)(1), 1111(l)(2), 1111(l)(3)(B), and 1115(cc))

### **Prepaid telephone calling service**

The Tax Law was amended to clarify that, if a county, city, or school district imposes segmented sales and use taxes on consumer utility services, these taxes do not apply to prepaid telephone calling services. As a result, only a county's or city's general sales and use taxes apply to prepaid telephone calling services.

This is a technical amendment, and is deemed to have been in full force and effect on and after March 1, 2000.

(Tax Law, section 1210(b)(4))

### **Sales and use tax exemptions - Liberty and Resurgence Zones**

Legislation was enacted that created three sales and use tax holiday periods in the Liberty and Resurgence Zones in lower Manhattan. These temporary exemptions occurred from June 9 - 11, July 9 - 11, and August 20 - 22, 2002. Sales and uses of tangible personal property (except motor vehicles, gasoline, diesel motor fuel, cigarettes, tobacco products, alcoholic beverages and building materials), prepaid telephone calling card services, restaurant food and drink, hotel occupancy, and cabaret/or roof garden charges will be exempt from the applicable State four percent sales and use taxes (and the one-quarter of one percent Metropolitan Commuter Transportation District sales and use taxes), provided the purchase price is less than \$500. New York City has also elected to exempt such property and services from its local four percent sales and use taxes.

The boundaries of the Liberty and Resurgence Zones were defined in legislation passed in 2001. Together, they generally comprise the area of Manhattan south of the centerline of Houston Street.

For detailed information about these sales and use tax holidays, please refer to TSB-M-02(2)S, *Temporary Sales and Use Tax Exemptions in Liberty Zone and Resurgence Zone*.

(Tax Law, section 1115-A)

### **Change in interest rates on underpayments**

Taxpayers are required to pay interest on tax that is not paid on or before the due date. The interest rate applicable to these underpayments has been increased by two percentage points effective April 1, 2003. The new rate applies to underpayments that remain or become due on or after that date. The interest rate on overpayments is not affected by this amendment.

The interest rate for underpayments up to and including March 31, 2003, is the greater of 12 percent per annum or the rate that is the sum of the federal short-term rate plus three percentage points. When the new rate takes effect on April 1, 2003, the interest rate on underpayments will be the greater of 14 percent per annum or the rate that is the sum of the federal short-term rate plus five percentage points.

(Tax Law, sections 1096(e)(2)(B), 1142.9, and 1145(a)(1)(ii))

### **Prepaid sales tax on cigarettes**

The Tax Law was amended to require that the prepaid sales tax on cigarettes, computed by multiplying the base retail price by a tax rate of seven percent, be rounded to the nearest whole cent per package. In addition, the Tax Law was amended to provide a new index to adjust the base retail price for inflation. A special provision was made for the adjustment to the base retail price to be made on September 1, 2002, so that it accurately reflects changes in the cost of cigarettes during the period between June 1997, and June 2002, during which no adjustments to the base retail price have been made.

These amendments apply to the adjustment and determination required by Tax Law Section 1111(j) for the periods beginning on and after September 1, 2002.

(Tax Law, section 1111(j))

### **Expanding participation in the sales tax EFT program**

The Tax Law was amended to reduce the threshold of annual State and local sales and use tax liability for requiring a person to remit payments by electronic funds transfer (EFT) or certified check from \$1 million to \$500,000, per year. An amendment was also made to the provision which allows taxpayers to opt out of the EFT or certified check program (known as the PromptTax Program) under certain circumstances. The threshold for purposes of this opt-out provision was reduced from \$500,000 to \$250,000, per year.

The amendments apply to sales tax EFT program periods beginning on or after September 1, 2002. The Tax Department will notify affected taxpayers of their new remittance requirements.

(Tax Law, section 10(b)(1)(A) and 10(b)(4)(A))

### **Sales tax rate reduction on transportation, transmission and distribution (T&D) of utilities - single retailer model**

The Utility Tax Reform Act was amended to clarify that the reduced rate of sales tax on the transportation, transmission or distribution (T&D) of electricity or gas under section 1105-C of the Tax Law will apply to sales of T&D in those areas of the State where the Public Service Commission (PSC) has approved the "single retailer model" for the regulated utility operating within that area. Under the "single retailer model" at issue, a single bill is provided to the customer for both the electricity or gas and the T&D.

This is a technical amendment, deemed to be in effect on and after September 1, 2000.

(Tax Law, section 1105-C(d))