



## **Summary of Budget Bill**

### **Sales and Use Tax Changes Enacted in 2011**

This memorandum contains a summary of sales and use tax changes that were enacted as part of the 2011-2012 New York State budget (Chapter 61 of the Laws of 2011) that was signed into law on March 31, 2011. The following legislative changes are summarized in this memo.

- [Lottery prizes that exceed \\$600 can be applied against certain tax liabilities owed to New York State](#)
- [Changes in the taxation and classification of diesel motor fuel](#)
- [Extension of certain alternative fuel tax exemptions](#)
- [Electronic communications for \*Online Services\* account holders](#)
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- [Electronic filing and electronic payment mandate](#)
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#### **Lottery prizes that exceed \$600 can be applied against certain tax liabilities owed to New York State**

Section 1613-c has been added to the Tax Law to allow the Director of Lottery and the Commissioner of Taxation and Finance to enter into an agreement to permit a match of the names of those owing tax liabilities to New York against the names of those winning lottery prizes in excess of \$600. Only the names of those owing tax liabilities that are warranted (a legal judgment filed with the County Clerk's office or Department of State), subject to a judgment, or legally fixed, final, and not subject to further administrative or judicial review, will be submitted to the Director of the Lottery. If a lottery prize winner owes New York State taxes, the prize money can be applied against the tax liability. This new law takes effect on August 1, 2011.

(Tax Law section 1613-c)

#### **Changes in the taxation and classification of diesel motor fuel**

The Tax Law has been amended to redefine the manner in which diesel motor fuel is classified for the purposes of the excise tax, petroleum business tax, and sales tax. The amendments obsolete the terms *enhanced diesel motor fuel* and *unenanced diesel motor fuel* and create the new classifications of *highway diesel motor fuel* and *non-highway diesel motor fuel*. Certain dyed diesel motor fuel is treated as non-highway diesel motor fuel and will be exempt or partially exempt from tax.

These amendments take effect on September 1, 2011, and will be covered in more detail in a separate TSB-M.

### **Extension of certain alternative fuel tax exemptions**

This amendment extends the current tax exemptions for alternative fuels to September 1, 2012. The current exemptions were set to expire on September 1, 2011.

This extension continues the full exemptions for E85, compressed natural gas (CNG), and hydrogen, and the partial exemption for B20 from motor fuel taxes (Article 12-A), petroleum business taxes (Article 13-A), fuel use taxes (Article 21-A), and sales and use taxes (Articles 28 and 29). This legislation also makes a technical correction to the definition of E85 to more appropriately describe it as a fuel blend consisting of ethanol and motor fuel.

**Note:** The exemption for B20 does not apply to the prepaid sales tax.

For more information about the changes made to the Tax Law, see [TSB-M-11\(5\)M, \(8\)S, Amendments to Articles 12-A, 13-A, and 28 of the Tax Law to Modify Certain Definitions and to Extend Exemptions for Alternative Fuels](#).

### **Electronic communications for *Online Services* account holders**

Chapter 61 of the Laws of 2011 added new section 35<sup>1</sup> to the Tax Law. This section provides that the Tax Department may use electronic means of communication to deliver certain documents to *Online Services* account holders who have authorized the department to do so. Upon receiving authorization, the department may electronically transmit to the account holder any document it is required by law or regulation to mail. This includes any document required to be sent by certified mail and/or registered mail. The department's record of an electronic transmission of a document to the account holder will constitute appropriate and sufficient proof of delivery, and the record will be admissible in any action or proceeding.

This provision took effect March 31, 2011.

*Online Services* account holders must authorize the use of electronic communications to receive certain documents. The ability to receive these documents electronically will begin for different types of notices and taxes at different times. For more information on *Online Services*, including how to create an account, visit the Tax Department Web site ([www.tax.ny.gov](http://www.tax.ny.gov)).

(Tax Law section 35)

### **Additional requirements intended to improve sales tax compliance**

The Tax Law has been amended to authorize the department to impose additional requirements upon certain persons required to collect sales tax. Specifically, the new requirements can apply to any person who is required to collect tax but has failed to do so, has not remitted sales tax collected to the department, or has not timely filed sales tax returns. Under this new law, the

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<sup>1</sup> Note: There are two Sections 35 of the Tax Law. The other section 35 contains provisions for the *Economic transformation and facility redevelopment program tax credit*.

person must, **upon being notified by the department**, deposit the sales tax he or she collects into a separate bank account at a department-approved federally-insured banking institution within New York State. The deposits must be made on a weekly basis, and the person must authorize the department to debit that account. Any person who fails to comply with these requirements may be required to file a bond with the department. In addition, the person's *Certificate of Authority* may be revoked or suspended if he or she fails to comply with these requirements. This provision is effective March 31, 2011, and unless extended, expires on December 31, 2012.

Also, the new law gives the department the authority, when it deems it necessary to protect sales tax revenue, to notify persons required to collect tax who file returns on a quarterly basis that they must begin to file monthly sales tax returns (part-quarterly returns). This provision is effective March 31, 2011.

(Tax Law sections 1134(a)(4)(A), 1136(a) and 1137(e)(2))

### **Electronic filing and electronic payment mandate (Articles 28 and 29)**

Chapter 61 of the Laws of 2011 made several changes to the requirements for electronic filing of tax returns.

**New penalty and interest provisions for taxpayers other than personal income taxpayers.** The following penalty and interest provisions apply to taxpayers for taxes **other than personal income tax**:

- Under current law, a taxpayer who is required to electronically pay any liability is assessed a penalty of \$50 for each failure to electronically pay the liability. The penalty will be imposed unless the taxpayer can show that the failure was due to reasonable cause and not willful neglect. Under the new law, the following additional penalties also apply to a taxpayer who is required to e-file any authorized document that fails to e-file the authorized tax document:
  - a penalty of \$50 for each failure to e-file unless the taxpayer can show that the failure was due to reasonable cause and not willful neglect, and
  - a penalty under the applicable article for the failure to file a return or report, whether a paper return or report has been filed or not.

These new penalties are effective May 30, 2011.

- If a taxpayer who is required to e-file any authorized document fails to e-file the authorized tax document, the taxpayer will not be eligible to receive interest on any overpayment until the document is filed electronically. This provision is effective May 30, 2011.

**Note:** Any claim for a vendor collection credit on a quarterly or annual sales tax return that is filed and/or paid after the due date will be disallowed.

**Requirements for tax return preparers.** The following requirements will apply to tax return preparers:

- If a tax return preparer prepares more than five original tax documents during any calendar year beginning on or after January 1, 2011, and in a succeeding year prepares one or more authorized returns using tax software, that preparer must file all authorized tax documents electronically in that succeeding tax year as well as each year thereafter. This requirement will first apply in determining whether any authorized tax document will need to be e-filed on or after January 1, 2012.
- If a tax return preparer who is required to e-file any authorized tax document fails to e-file the authorized tax document, the taxpayer will not be eligible to receive interest on any overpayment until the document is filed electronically. This provision is effective May 30, 2011.

The new provisions outlined above for taxpayers other than personal income taxpayers and tax return preparers are due to sunset on December 31, 2012. The e-file mandate rules that were in effect prior to the new provisions will be restored as of January 1, 2013. Additional information about these provisions will be available on the Department Web site ([www.tax.ny.gov](http://www.tax.ny.gov)).

(Tax Law sections 29, 658(g)(10), and 685(u)(5))

### **Economic Transformation and Facility Redevelopment Program**

Chapter 61 of the Laws of 2011 created the Economic Transformation and Facility Redevelopment Program. This new program provides tax incentives to businesses to stimulate redevelopment in targeted communities where certain correctional or juvenile facilities are closed (economic transformation areas). Elements of the program are in Article 18 of the Economic Development Law, section 35<sup>2</sup> of the Tax Law, and section 485-p of the Real Property Tax Law.

Generally, an *economic transformation area* means an area limited to the site of a closed facility or an area within a certain radius of a closed facility. The designation of the size of an economic transformation area will vary depending on factors including, but not limited to, the closed facility's location and the population density, poverty rate, unemployment rate, and the loss of jobs at that facility and in the region. Special rules apply for areas within the Metropolitan Commuter Transportation District and the Port Authority District.

A *closed facility* means a correctional facility as defined in section 2(4)(a) of the Correction Law that has been selected by the governor of New York State for closure after April 1, 2011, but before April 1, 2012; or a facility operated by the Office of Children and Family Services under Article 19-G of the Executive Law that is closed under the authority of that office, provided the Commissioner of Economic Development has been properly notified of the closure.

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<sup>2</sup> Note: There are two Sections 35 of the Tax Law. The other section contains provisions for the *Use of electronic communications for Online Services account holders*.

**Article 18 of the Economic Development Law** – The economic transformation area(s) must be established by the Empire State Development Corporation (ESDC) before applications for the program can be accepted.

To be eligible for the tax benefits available under this program, a participant must:

- qualify as a *new business*;
- apply for and receive a *Certificate of Eligibility* from ESDC based on a projected creation of at least five net new full-time jobs and the making of certain qualified investments in an economic transformation area. The value of investments combined with wages and benefits paid to the net new jobs must be at least 10 times the amount of projected tax benefits (i.e., a benefit-cost ratio of 10:1);
- demonstrate that it has created at least five net new full-time jobs and met its benefit-cost ratio;
- be in compliance with all worker protection and environmental laws and regulations;
- not owe past-due federal or state taxes or local property taxes (unless those taxes are being paid through an executed payment plan); and
- have the location of its business for which it seeks tax benefits wholly located within the economic transformation area.

The following business entities are **not** eligible to participate in this new program:

- a retail business if the application is for any facility or business location that will be primarily used in making retail sales to customers who personally visit the facility;
- a business engaged in offering professional services licensed by the state or by the courts of this state; and
- a business that is or will be principally operated as a real estate holding company or as a landlord for retail businesses or entities offering professional services licensed by the state or by the courts of this state.

However, ESDC may determine that an ineligible business as described above may be allowed to participate in the program at the site of a closed facility if it is pursuant to an adaptive reuse plan for a substantial portion of the facility. Also, additional eligibility criteria may be developed, by regulation, by the commissioner for all participants in this program.

If admitted into the Economic Transformation and Facility Redevelopment Program, a participant is no longer eligible for the Excelsior Jobs Program, the Empire Zones Program, or any tax credits under the Brownfield Cleanup Program with regard to a business or facility located in an economic transformation area.

A participant must start construction on or acquire a qualified investment or create at least one net new job within one year of the issuance of its *Certificate of Eligibility* to be eligible for the program tax credits. A participant may claim the Economic Transformation and Facility Redevelopment Program Tax Credit beginning in the first tax year in which it creates five net new jobs.

**Section 35 of the Tax Law** – A participant subject to tax under Article 9 (Corporation Tax), 9-A (Business Corporations), 22 (Personal Income Tax), 32 (Franchise Tax on Banking Corporations), or 33 (Insurance Franchise Tax) of the Tax Law that has received a *Certificate of Eligibility*, creates at least five net new jobs, and demonstrates that the required benefit-cost ratio has been met, will be eligible to claim the economic transformation and facility redevelopment tax credit. The tax credit is comprised of the following four components:

- Jobs tax credit – an amount equal to 6.85% of the gross wages paid for each net new job.
- Investment tax credit – for qualified investments on the grounds of a closed facility, the amount of credit before limitation will be 10% of the cost or other federal basis of the qualified investments. However, the aggregate amount of credits allowed to all eligible participants at each facility cannot exceed \$8 million. For qualified investments outside the grounds of the facility, but within the economic transformation area, the amount of the credit before limitation is 6% of the cost or other federal basis of the qualified investments. However, the credit allowed to each participant cannot exceed \$4 million. If the participant is a partnership, a limited liability company, or an S corporation, the \$4 million limitation is applied at the entity level.
- Job training credit – an amount equal to 50% of the qualified training expenses paid during the tax year with a cap of \$4,000 per employee per tax year. This component only applies to training provided to employees who were hired after they lost their jobs at a closed facility and must relate directly to the duties that the employees will perform in the economic transformation area. The employees for whom the expenditures are made must be employed in a full-time, full-year position primarily located at the site in the economic transformation area during the training, and for 180 days after its completion.
- Real property tax credit – For property located entirely within the grounds of a closed facility, the credit in the first tax year of the benefit period is equal to 50% of the real property taxes assessed and paid. In subsequent years of the benefit period, the percentage decreases by 10% each tax year. For property located in an economic transformation area outside of the closed facility, the credit in the first year of the benefit period is 25% of the real property taxes assessed and paid. In subsequent years of the benefit period the percentage decreases by 5% each tax year.

The benefit period for the tax credit is five consecutive tax years, beginning with the first tax year in which the five net new jobs are created, but not later than two years after the *Certificate of Eligibility* is issued. If in any year of the benefit period the participant fails to maintain the required level of five net new jobs, the participant will not be allowed a credit for that year. (A failure to qualify for the credit in one tax year will not extend the benefit period.) Failure to meet

the required benefit-cost ratio, measured at the completion of the benefit period, may result in a recapture of credit.

**Refund of sales and use tax.** In addition to the economic transformation and facility redevelopment tax credit mentioned above, a participant may also be eligible for a refund of New York State sales or use tax paid for certain purchases of tangible personal property. The tangible personal property must be used in construction, expansion, or rehabilitation of industrial or commercial real property and must become an integral part of the property that is located within an economic transformation area. To qualify, the tangible personal property must be purchased or contracted to be purchased after the participant receives its *Certificate of Eligibility* and be incorporated into real property before a certificate of occupancy is issued for the real property.

A refund is also available for sales tax paid on certain purchases of tangible personal property used by contractors. The tangible personal property must be used in erecting a structure or building after the participant has received its *Certificate of Eligibility*, or in adding, altering, or improving a participant's real property, property, or land. To qualify, the tangible personal property must become an integral part of the property improvements and the structure, building, real property, property, or land and must be located within an economic transformation area. The tangible personal property must be in the contractor's inventory on or after the day the participant receives its *Certificate of Eligibility*, or the contractor must purchase or be contracted to purchase the property after the participant receives its *Certificate of Eligibility*. The tangible personal property must be incorporated into the real property before a certificate of occupancy is issued. There is no refund available for tax paid on services that the contractor may provide in relation to the tangible personal property, including the services of installing the tangible personal property.

The refunds described above are applicable only to the 4% state portion of the sales tax paid. They do not apply to any local sales tax imposed by a county or city and do not apply to the 3/8% sales tax imposed in the Metropolitan Commuter Transportation District (MCTD). The participant or contractor may only apply for a refund once per sales tax quarter, and the amount cannot be claimed as a credit on a sales tax return. Refunds must be claimed within three years after the tax was payable to the department.

(Tax Law section 1119(f))

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.