

**Supplemental Summary of Recently Enacted Legislation
Affecting Sales and Use Taxes Effective in 2006**

Governor George E. Pataki recently signed into law several bills that amend the Tax Law relating to sales and compensating use taxes (sales tax). These amendments, which take effect in 2006, were not addressed in previously issued TSB-Ms. This memorandum summarizes those chapters.

Exemption for portion of charges paid to roof garden, cabaret, or similar place

Effective December 1, 2006, the portion of the charge by a roof garden, cabaret, or similar place (together, "venue") for admission to attend a live dramatic or musical arts performance (performances) is exempt from sales tax.

The exemption from sales tax will apply only if:

- (1) the venue states the admission portion of the charge separately from the rest of its charges; **and**
- (2) the venue also states separately its charges for food, drink, service, and merchandise, **and**
 - (i) the separately stated charges for food, drink, service, and merchandise are not less on a day when performances are offered compared to those charges on a day when performances are not offered; **or,**
 - (ii) if the venue is only open on days when performances are available, its separately stated charges for food, drink, service, and merchandise are comparable to charges for comparable food, drink, service, and merchandise at nearby venues and restaurants located in the same or an adjacent metropolitan statistical area as the venue or in a comparable area if the place is not in a metropolitan statistical area; **and**
- (3) the venue retains and makes available to the Tax Department the menus and any other statements of its prices showing all of its charges for food, drink, service, merchandise, and admission as part of the records required to be kept under the sales tax law.

(Chapter 279, Tax Law, section 1123)

Gift shop sales at a veterans' home

Effective December 1, 2006, a retail sale of tangible personal property by any gift shop located in a veterans' home, as described in Title 38 of the United States Code, will be exempt from sales tax. Accordingly, for the purpose of this exemption, the term *veterans' home* shall mean any of the five veterans' nursing homes operated by New York State for veterans disabled by age, disease, or otherwise who by reason of such disability are incapable of earning a living.

The exemption applies regardless of the amount of the retail sale or who the purchaser is. That is, the exemption is not limited to sales made solely to residents of the facility.

(Chapter 296, Tax Law, section 1115(ff))

Certain charges and fees collected by and imposed upon rental vehicle companies operating at airports

The General Business Law (GBL) has been amended in relation to the fees that an airport charges to rental vehicle companies that operate car rental facilities at the airport. In 2004, the GBL was amended to provide that certain fees that are charged by an airport to the rental vehicle companies could be separately stated and recovered from the customers of the rental vehicle companies.

In TSB-M-04(8)S, *Summary of 2004 Budget Legislation and Other Recently Enacted Legislation Relating to Sales and Compensating Use Taxes*, the Tax Department stated that, unless otherwise exempt, regardless of whether the rental vehicle company separately states such fees on its bill to the renter, the fees are part of the receipt subject to sales tax.

In 2004, the fees were called *consolidated facility charge* and *concession recovery fee*. The new law changes the term *consolidated facility charge* to *consolidated facilities charge*. The term *consolidated facilities charge* has been amended to mean, in part, "the allowable recovery by a rental vehicle company from its renters of those fees, including any taxes or fees paid on such fees, for the finance, design, construction and operation of consolidated airport facilities." The term *concession recovery fee* has been amended to mean, in part "the allowable recovery by a rental vehicle company from its renters of those fees, including any taxes or fees paid on such fees, which an airport operator or its governing entity imposes on a rental vehicle company's applicable revenues." In addition, the term "airport fees" has been added to the GBL to mean the *consolidated facilities charge* and /or the *concession recovery fee*.

These changes in terminology and definitions do not affect the taxability of these fees for sales tax purposes. The charges and fees are still part of a rental company's taxable charge for renting a vehicle, even if the rental company separately states the fees on its bills to its rental customers. See TSB-M-04(8)S.

(Chapter 731, General Business Law, section 396-z)

Authorization of New York State Department of Motor Vehicle Partners to collect and remit sales tax when registering or accepting applications for certificates of title of motor vehicles

Effective December 1, 2006, certain persons can be authorized by the Tax Department to collect and remit sales tax from the purchaser of a motor vehicle even though the person collecting the tax did not sell the motor vehicle to the purchaser. Before the person can collect tax, the person must: (1) have been certified by the Department of Motor Vehicles as a “Partner” to perform the functions of registering motor vehicles and accepting applications for certificates of title of motor vehicles; (2) register with the Tax Department as a person required to collect sales tax; and (3) agree to be subject to Tax Department and local taxing jurisdiction with respect to the functions of a person required to collect sales tax.

The Tax Department will issue a future TSB-M with additional guidance.

(Chapter 489, Tax Law, section 1142)

Exemption for the purchase of certain military decorations

Effective December 1, 2006, certain military decorations, including, but not limited to, ribbons, medals, mini-medals, and lapel pins, will be exempt from sales tax when sold to an active member or a veteran of the United States military.

In order to make the purchase exempt from sales tax, the purchaser as described above must provide the seller with a copy of Form ST-121, *Exempt Use Certificate*. Part III, Box U, of Form ST-121 must be completed by writing “military decoration – Tax Law Section 1115(a)(11-a)” in the box. In addition, the law provides that the purchaser must also show the vendor his or her military identification or other documentation (such as discharge papers) as proof of current military service or veteran status. However, the vendor is not required to retain a copy of this proof.

(Chapter 291, Tax Law, Section 1115(a)(11-a))

Previously Announced 2006 Sales Tax Legislation

For information on other sales tax legislation enacted in 2006 and that took effect in 2006, see the Technical Services Bureau Memoranda listed below, which are available on the Department website at www.nystax.gov.

- TSB-M-06(6.2)S, *Sales and Use Tax Exemption of Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing (Effective June 1, 2006) (Change in local elections for counties and cities)*.
- TSB-M-06(8)S, *New Guidelines on the Sales of Motor Fuel and Diesel Motor Fuel Subject to the Cents-Per-Gallon Sales Tax*.

- TSB-M-06(9)S, *Local Sales Tax on Qualified Motor Fuel and Diesel Motor Fuel - Localities Electing to Change to Cents-Per-Gallon Calculation Method Effective July 1, 2006, and Other Rate Information.*
- TSB-M-06(10)S, *Sales Tax Exemptions and Reductions for Certain Alternative Fuels Beginning September 1, 2006.*
- TSB-M-06(11)S, *Change to Local Chautauqua County Sales and Compensating Use Tax Exemption for Clothing, Footwear, and Items Used to Make or Repair Exempt Clothing Effective September 1, 2006.*
- TSB-M-06(12)S, *Summary of the 2006 Budget Legislation Relating to Sales Taxes.*