Consumer Affairs

Comments Received by the Department of Consumer Affairs

on

Proposed Amendment to the Consumer Protection Law rules regarding the Collection of Unlawful Sales Tax

Advocates of the Food Industry Since 1900
FIA
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Testimony
by the Food Industry Alliance of New York State, Inc.
in opposition to the
Amendment of Rules Regarding Collection of Unlawful Sales Tax
Reference Number 2019 RG 100

Thank you for the opportunity to submit testimony on the proposed Amendment of Rules Regarding Collection of Unlawful Sales Tax, Reference Number 2019 RG 100 ("Proposed Rule"). My name is Jay Peltz and I am the General Counsel and Senior Vice President of Government Relations for the Food Industry Alliance of New York State (FIA). FIA is a nonprofit trade association that advocates on behalf of grocery, drug and convenience stores throughout New York.

Neighborhood grocers have never faced a more difficult operating environment. Operating expenses are increasing due to high rents, rising health insurance premiums and the $15.00 minimum wage. On top of that, local grocers are attempting to manage the costs and burdens of recently enacted city and state benefit mandates, including paid sick, safe and family leave. Neighborhood grocers are trying to meet these challenges while losing market share to nontraditional retailers (that are largely nonunion operators) such as internet grocers and natural/organics food retailers. In this context, regulators should not be increasing the cost of doing business by expanding a dubious rule which, among other things, does not protect good faith mistakes by grocers making significant investments in compliance.

The history of the Unlawful Sales Tax Rule is illuminating. The Statement of Basis and Purpose of Rule (the "Original Statement") included in the 2016 Notice of Adoption of the original Unlawful Sales Tax Rule provided that the "...rule is *necessary* to declare that collection of sales taxes on goods and services that are not subject to such tax laws shall be a deceptive trade practice for purposes of Section 20-701 of Subchapter 1 of Chapter 5 of Title 20 of the New York City Administrative Code (italics added)." But the Original Statement did not assert *why* it was necessary to make such a declaration. The text of section 20-701(a) (providing the definition of "deceptive trade practice") is quite broad, including the articulation of *nine* separate practices that constitute a deceptive trade practice. Yet nowhere in the definition is the enforcement of state laws in general, or state tax laws in particular, found.

Could this be because the Mayor and City Council, in enacting the local deceptive trade practice law, did not intend that a local agency that does not specialize in interpreting and enforcing state tax laws enforce such laws through a local law and related rulemaking? Put another way, in the context of robust enforcement of state sales tax laws and rules by the New York State Department of Taxation and Finance ("NYSDTF"), where in the legislative history of the definition of deceptive trade practice did the Mayor or City Council indicate that the City's deceptive trade practice law be used to indirectly enforce state sales tax laws and rules?

Moreover, state sales tax laws and rules are complex and vague. Accordingly, specific expertise is required to enforce those mandates in a reasonable and equitable manner. Does the Department of Consumer Affairs ("DCA") – which is not a tax agency - have such expertise? In addition, where in the legislative history of the state sales tax laws is it indicated that the State Legislature or the Governor intended that local agencies enforce such laws through a local law? The answers to these questions could justify local enforcement of state sales tax laws, but the department has never provided such answers.

Nowhere in the Original Statement or in the Statement of Basis and Purpose of Proposed Rule does DCA indicate what language from the definition of deceptive trade practice it is interpreting. Absent such an explanation, the department would be amending, rather than interpreting, section 20-701. In that case it would be usurping the role of the Mayor and the City Council in the legislative process. Accordingly, please provide us with the language of section 20-701(a) that DCA is interpreting and the portions of the legislative record that support the department's interpretation of legislative intent.

Additionally, section 20-701(a) defines deceptive trade practice as "Any false...or misleading oral or written statement...or other representation of any kind made in connection with the sale...or in connection with the offering for sale...of consumer goods..., *which has the capacity, tendency or effect of deceiving or misleading consumers* (italics added)." Merriam Webster defines deception as "behavior that is *meant* to fool or trick someone (italics added)." Crookedness, deceitfulness, dishonesty, dupery and duplicity are among the synonyms used by Merriam Webster for deception. The synonyms for "mislead" are similar (bamboozle, con, dupe, fake out, fool, etc.).

Does the good faith, mistaken charge of a sales tax fit within the kind of conduct described by the foregoing definition and synonyms? The grocer's intent and the context in which it operates clearly indicate that it does not. Food retailers offer thousands of items for sale. As the assortment constantly changes, retailers must determine which items are taxable and which are not. This decision is made more difficult due to ambiguous, conflicting guidance often provided by NYSDTF. In addition, while the Original Statement provides that "...New York State Tax law specifies *categories* of goods...that are subject to sales...taxes... (italics added)," it failed to acknowledge that NYSDTF does not provide a master list, with universal product codes, on the tax status of *every item* available in the marketplace.

This makes compliance very difficult: while carbonated beverages are taxable and fruit juices are not, what is the tax status of carbonated fruit juices? While the purchase of a single container of soda is taxable, are all 3 units of soda subject to a buy-one-get-two free promotion taxable? Cookies are not taxable, but candy is. Are Twix (or similar) bars cookies or candy? Skin moisturizers are taxable, suntan lotion is not. What is the tax status of a skin moisturizer with suntan lotion in it? Considering these circumstances, how could the good-faith, mistaken collection of a sales tax be deemed crooked, deceitful, dishonest or duplicitous?

And what are the fruits of the alleged deceptive practice? The proceeds of the purported deception are remitted to the state, where they are used for the benefit of the public. The party engaged in the

"deception" realizes no gain. To the contrary, the retailer is worse off, since it incurs an unnecessary administrative cost and risks losing a customer through overcharges.

In addition, there is no discussion, in section 20-701(a) or in the Proposed Rule, of what constitutes a deceptive trade *practice*. According to Merriam Webster, practice means "to do or perform *often, customarily or habitually* (italics added)." If a retailer, when attempting to determine which of the thousands of items it offers for sale are taxable, gets 99% of the items right and 1% wrong, is it engaged in a deceptive trade *practice*? To the contrary: That retailer would seem to be engaged in the *practice* of good faith compliance with state sales tax law, with a very high success rate.

Notwithstanding the foregoing questions and concerns, the city is seeking to expand liability for establishments that spend considerable resources while making a good faith effort to comply with state sales tax law. Under the Proposed Rule, merely representing that a sales tax may be collected on a nontaxable item would be a violation. According to the Statement of Basis and Purpose of Proposed Rule, the reason for this change is that "The Department is not always able to perform test purchases that include an exchange of payment." But a good faith, mistaken representation by a seller does not result in harm to consumers. Only the improper collection of money does. Clearly, a retailer can realize that an item was mistakenly characterized as taxable and respond appropriately, including changing a price tag and not charging tax at the point of sale.

It is the department's position that intent is not legally required to deem a trade practice "deceptive." Based on the circumstances described in this testimony, the issue is not whether intent *must be* established to prove a deceptive trade practice. Rather, the question is whether such intent *ought to be* required. Put another way, do the above conditions indicate that a reasonable, balanced, fair and sensible policy requires a showing of intent or willfulness to prove a *deceptive* trade practice? We think they clearly do.

Considering the foregoing, we respectfully request that the Proposed Rule be withdrawn so that DCA can discuss a framework with FIA that will reduce tax related overcharges without unnecessarily penalizing businesses. Should the department choose to proceed with this rulemaking, we ask that the Proposed Rule be revised to incorporate standards intended to afford reasonable protections to establishments that make good faith mistakes, including that a (1) warning be provided if a first violation arises from a good faith mistake and (2) *willful pattern* of deception be proven to establish a violation.

Thank you for your time and attention to FIA's concerns. We look forward to working with you on this issue.

Respectfully submitted,

Food Industry Alliance of New York State, Inc.
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The Yemeni American Merchants Association (YAMA), is a grassroots nonprofit that was established after the very successful Bodega Strike in 2017, a merchant organized protest against the Muslim Ban. We at YAMA are pleased to provide testimony on behalf of our merchants on the subject of "Amendment of Rules Regarding Collection of Unlawful Sales Tax."

We would like to thank the Department of Consumer Affairs (DCA) for considering our merchants and their position on this matter. We at YAMA see this amendment to be a great idea and a good opportunity to educate our merchants on the subject of unlawful sales tax practices.

As an organization that represents thousands of Yemeni merchants across New York City, we are proud to say we are dedicated to educating, advocating and elevating our community. Our merchants try their best to be thorough and very careful in areas that require legal vigilance. When we've seen unlawful sales practices it's always due to lack of understanding of sales tax practices, and it's usually a worker and not the owner. It's very hard for many small business owners to thoroughly train their staff and keep a close eye on their work. So we do our best to educate them on how they can make their workers aware of tax legalities.

We at YAMA have held events and broadcasted on facebook live regarding this specific issue in the past. We continue to educate or merchants every chance we get on this matter, but it's hard to engage every individual alone. Yemeni merchants are always receptive about issues like this but due to the challenge of running their business, they're not always available to attend our educational events. It's also hard for them to get all this information just by watching our informational videos on Facebook.

We believe the implementation of this amendment would be a good opportunity to educate our merchants on the subject of deceptive sales tactics. We would like DCA to have an open line of communication with us and our merchants on issues like these. We would appreciate it if DCA can provide educational resources and materials in Arabic explaining how merchants should be applying taxes on individual items in detail. The materials should also include a description of the new amendment and penalties associated with unlawful sales tax practices.

Our merchants are always looking for ways to improve their ways of conducting business and are always welcome to new amendments that protect consumers from unlawful sales tactics. We are more than happy to collaborate with you on any future resolutions and hope you all consider us for any future amicable decision.

GNYADA

Greater New York
Automobile Dealers
Association

Via Email (cortiz@dca.nyc.gov)
Carlos Ortiz
Director of Legislative Affairs
New York City Department of Consumer Affairs
42 Broadway, 5th Floor
New York, NY 10004

Dear Mr. Ortiz,

I am writing on behalf of the Greater New York Automobile Dealers Association (GNYADA) to comment on the Proposed Amendment to Chapter 5 of Title 6 of the Rules of the City of New York, regarding the collection of unlawful sales tax.

GNYADA is a not-for-profit trade association representing more than 400 franchised new vehicle dealers in the downstate region of New York with approximately 125 retailers in the five boroughs in New York City. GNYADA members are engaged in the sale and leasing of new and used vehicles, as well as servicing and repairing customer vehicles.

While the proposed amendment, which would make it a deceptive trade practice for any seller to misrepresent the amount of sales tax due or whether an item is taxable, is well-intended, we must respectfully oppose it.

The New York State Department of Taxation and Finance (DTF) is already responsible for ensuring businesses' compliance with State tax law. The DTF has the authority to penalize any business that fails to comply with existing rules for collecting and remitting tax. Having NYC having additional oversight could add to confusion and a different interpretation of sales tax compliance.

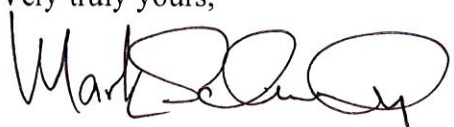
Tax law involving vehicle sale and long-term lease transactions is both complex and unique. In fact, this area of tax law is so complex that the New York State Department of Taxation and Finance, in cooperation with the Association, developed specific working guides for automobile dealers. *Publication 838: A Guide to Sales Tax for Automobile Dealers* and *Publication 839: A Dealer's Guide to Sales and Use Taxes on Long-Term Motor Vehicle Leases in New York State*, which are included here for your reference, are detailed guides that address the taxability of different types of transactions and the variety of products and services dealers offer.

Greater New York
Serving Our Members Since 1910!
Automobile Dealers Association

Dealers who fail to collect and remit the proper sales tax to the state are subject to severe State penalties, making this City regulation duplicative; it may have unintended consequences as a result. Dealerships are small businesses operating under multiple layers of regulations and this additional oversight by the City may result in different interpretations, depending on the understanding of the complexity of the industry and transactions involved.

The Association is available to meet with DCA to work through and address this important issue and discuss the impact of the rules on dealership businesses. Thank you for taking the time to work with us to address this issue.

Very truly yours,



Mark Schienberg
President

cc: Rulecomments@dca.nyc.gov
Arthur Goldstein (AGG@dhclegal.com)

NEW YORK STATE | Department of Taxation and Finance

Publication 839

A Dealer's Guide to Sales and Use Taxes on Long-Term Motor Vehicle Leases in New York State

Pub 839 (7/10)

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Introduction

This publication explains the rules for computing *State and local sales and use taxes* on long-term motor vehicle leases. Sales and use taxes are commonly referred to as *sales tax*; both terms will be used interchangeably in this publication.

A publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes to the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, and changes in Department policies could affect the validity of the information presented in this publication. Publications are updated regularly and are accurate on the date issued.

Definitions

For purposes of this publication:

Long-term lease means a lease that covers a period of one year or more. It also includes any lease for a period of less than one year that includes one or more options to renew or contains similar contract provisions which, if exercised, would make the total period of the lease one year or more.

Motor vehicle means a motor vehicle as defined in section 125 of the Vehicle and Traffic Law, with a gross vehicle weight of 10,000 pounds or less. The term *motor vehicle* includes any motorized vehicle operated or driven on a public highway. Cars, light trucks, vans, motorcycles, and motorbikes are examples of motor vehicles. For purposes of this publication, the following vehicles are not considered motor vehicles:

- electrically-driven mobility assistance devices operated or driven by a person with a disability;
- snowmobiles;
- all terrain vehicles (ATVs);
- fire and police vehicles (other than ambulances);
- farm tractors and other farm equipment used exclusively for agricultural purposes or for snow plowing; and
- self-propelled caterpillar or crawler-type equipment while operated on a construction site.

General

Section 1111(i) of the Tax Law provides special rules for computing and paying State and local sales and use taxes on long-term motor vehicle leases. In general, all receipts due or consideration given, or contracted to be given, for the leased motor vehicle for the entire period of the lease (including any option to renew or similar provision) are subject to sales tax at the inception

of the lease, even if the payments are not required to be made at that time. The total sales tax due must be paid by and collected from the lessee on the date the first lease payment is due or the date the vehicle is registered with the New York State Department of Motor Vehicles (DMV), whichever is earlier.

Computing the tax

In the case of long-term motor vehicle leases, the **sum** of the following payments, fees, and charges due from the lessee is subject to sales tax, and the tax must be paid and collected on the date described above:

- any down payment, up-front payment, or due-on-signing payment;
- the total of the monthly (or other periodic) payments due for the entire term of the lease, including any option to renew (see *Monthly payments*, on page 7). (Also, special rules apply to leased vehicles that are primarily used in a business or trade. See *Computation of total monthly payments for leased vehicles primarily used in a business or trade more than 50% of the time*, on page 14.);
- acquisition fees, bank fees, certain documentation fees (see *Documentation fees*, on page 8), disposition fees, warranty fees, such as extended service programs and maintenance programs, transportation and destination charges, advertising charges, dealer preparation fees, and any other fees or charges that are charged at the start of the lease period, if the fee or charge is not already included as part of the monthly payment under the lease; and
- the amount of any rebate or incentive provided or reimbursed by the manufacturer or any other third party that is assigned or paid to the dealer and applied against the amount due under the lease, such as a factory rebate, first-time buyer incentive, college student incentive, or other similar rebate or payment.

The following charges and fees associated with a long-term motor vehicle lease are also subject to sales tax. However, the tax is due at the time the charge or fee is actually paid by the lessee:

- excess mileage or use charges;
- excess wear charges;
- damage, repair and similar charges;
- lease transfer or lease assumption fees;
- the charge to purchase the vehicle at the end of the lease term, if the lessee decides to purchase the vehicle; and

- any disposition fee or any other fee if the amount of the fee is charged at the end of the lease term.

The following charges, fees, and incentives are generally **not** subject to sales tax:

- vehicle registration and title fees if the amount charged by the dealer is the exact amount charged by DMV and the charge is not included in the monthly payment (see *Vehicle registration and title fees*, on page 8);
- certain documentation fees (see *Documentation fees*, on page 8);
- any security deposit that is refunded to the lessee at the end of the lease term (see *Security deposits*, on page 8);
- the charge for "*gap insurance*" if the charge is reasonable, separately stated, and not included in the monthly payment; and
- any rebates, discounts, or similar incentives provided by the vendor (usually the dealer/lessor) and not reimbursed by the manufacturer or any other third party.

Monthly payments

The calculation of the monthly lease payment is a business decision made by the dealer and may be based on several factors. These factors may include the following:

- the value of the vehicle being leased;
- the length of the lease term;
- the expected residual value of the leased vehicle;
- the value of any trade-in credit (discussed later);
- the time value of money;
- the creditworthiness of the customer;
- the dealer's profit;
- any additional charges; and
- any other factors deemed relevant by the dealer.

Based on their analysis of these factors, one dealer may be willing to lease a vehicle for $400 per month for 36 months, while another dealer may lease

the same vehicle for the same lease term for a different monthly amount. Whatever amount a dealer decides on and agrees upon with the lessee is used to compute the total of the lease payments due over the term of the lease.

Vehicle registration and title fees

If a dealer obtains the vehicle's DMV registration or title documents for the lessee, and the dealer separately states the actual DMV vehicle registration and title fees on the lease document or other memorandum of the price given to the lessee, the fees would not be subject to sales tax.

These fees would also not be subject to tax if the dealer charges the lessee a separately stated, estimated amount (DMV fee deposit) for registration and title fees, does not include the deposit in the monthly payment, and later refunds to the customer the amount of the deposit that exceeded the exact DMV charge. However, if the dealer charges the lessee more than the amount charged by DMV, the excess amount is taxable. In addition, if the dealer builds the registration and title fees into the monthly payments due under the lease, the fees would be subject to tax.

Documentation fees

Documentation fees are fees charged by the dealer to prepare, on behalf of the purchaser/lessee, the paperwork necessary to obtain a title and/or registration for the vehicle. These fees are subject to sales tax unless both of the following conditions are met:

- The fee is separately stated in the lease or contract, the fee is reasonable, and it is not included in the monthly payment.
- The customer has the option to avoid paying the fee by preparing his or her own paperwork and taking the paperwork to DMV.

If a dealer is contractually obligated to the leasing company to ensure that the vehicle is properly registered to the lessee and titled to the leasing company, the lessee/customer may not have the option of preparing his or her own paperwork and taking it to DMV. In that case, the dealer's charges to the customer for documentation fees would be subject to tax.

Security deposits

A charge by the dealer for a refundable security deposit on a leased vehicle is considered collateral security and is not subject to sales tax. However, when the lessee returns the vehicle at the end of the lease, any portion of the deposit not returned to the lessee is subject to sales tax at that time.

Treatment of trade-ins

Trade-ins are treated differently in a lease situation than in an outright purchase situation. In the case of an outright purchase, the dealer will first determine the cost of the vehicle being purchased and add any taxable fees. The dealer will then reduce that total by the amount it is willing to allow as a trade-in allowance for the property the customer will trade in, and compute the sales tax due on the balance. However, when a customer trades in a vehicle as partial payment for the lease of a new vehicle, the dealer will

determine the value of the vehicle being traded in, reduce the total lease price of the vehicle (capitalized cost) by the value of the property the lessee will trade in, and then re-compute the monthly lease payments based on the reduced capitalized cost. Alternatively, the dealer may choose to reduce the down payment or other charges due from the lessee in order to account for the value of the trade in. The sales tax is then computed by multiplying the total of the reduced amounts by the applicable tax rate. (See Example 6, on page 13, regarding how the sales tax is computed when the vehicle being traded in is subject to an outstanding loan.)

The trade-in allowance cannot be taken again as a credit against the total amount of lease payments after the monthly lease payment amount has already been reduced. To do so would result in the trade-in allowance being given effect twice, once when the dealer uses the allowance to reduce the capitalized cost of the vehicle and the monthly lease payments due based on the reduced capitalized cost, and again when the dealer credits the trade-in allowance against the total of the reduced monthly lease payments for purposes of determining the taxable amount due to the dealer for the leased vehicle. This is not allowable.

There may be instances where the amount of a vehicle trade-in allowance is less than the amount the customer owes on the vehicle being traded in (that is, the customer has negative equity in the vehicle). As a result, the dealer may increase the monthly lease payment to be paid for the new vehicle under the lease. In this instance, the increased monthly lease payment is used to compute the sales tax due on the lease payments. Accordingly, when the dealer accepts the trade-in vehicle as part payment for the leased vehicle, pays off the amount owed by the customer on the trade-in vehicle, and adds that payoff amount to the price of the vehicle being leased, the payoff amount is considered part of the price of the leased vehicle. This would increase the capitalized cost of the leased vehicle, and thus would be subject to tax.

Collecting and remitting tax

In a typical motor vehicle leasing transaction, the dealer negotiates the lease price of a vehicle with a prospective lessee. At the time the lease is executed, assume that the dealer holds title to the leased vehicle and is the original lessor under the lease. The dealer will accept the lessee's trade-in vehicle and use the trade-in allowance to reduce (or increase) the capitalized cost of the leased vehicle. At this time, the lessee will pay the dealer any up-front costs, including the first month's lease payment and the sales tax. Under these circumstances, the dealer, as lessor of the vehicle, is required to collect and remit the sales tax. The total sales tax due under the lease is due at the inception of the lease.

When the leasing acquisition is completed and the lessee takes possession of the vehicle, the dealer may sell its interest in the leased vehicle to a finance company and also assign the lease to the finance company. If that occurs, then any tax due after the lease and sale/assignment (for example, tax due on

the lessee's payment of a lease transfer or lease assumption fee, or excess wear charges) must be collected and remitted by the finance company. The finance company, as owner of the leased vehicle and lessor under the lease, is also responsible for collecting and remitting the tax due if the lessee purchases the vehicle at the end of the lease. Therefore, any such finance company must register for sales tax purposes at least 20 days prior to commencing business in this State, and must keep records, file sales tax returns, and remit tax required to be collected. For more information about registering for sales tax purposes, see Publication 750, *A Guide to Sales Tax in New York State*.

Limitations on refunds and credits of sales tax paid on motor vehicle leases

Once a lease has been entered into and the customer has paid the tax due at the inception of the lease, no refund or credit of tax paid is allowed to either the dealer or the customer (except as explained below) if the lease is terminated early, even if the lease is terminated because the vehicle is destroyed in an accident. Nor is any refund or credit of tax allowable if the customer chooses not to exercise an option to renew the lease, even though the customer paid tax at the inception of the lease on the amount charged to purchase the option. Likewise, no refund or credit of tax is allowable if the customer fails to pay all of the lease payments to the dealer.

However, a customer may be entitled to a refund or credit of all or a portion of the tax paid on the lease of a motor vehicle where all or a portion of the capitalized cost of the vehicle is refunded to the customer by the vehicle manufacturer in accordance with the provisions of section 198-a or 198-b of the General Business Law (New Car / Used Car Lemon Laws). In these situations, **only** the customer is entitled to a refund or credit of the tax paid, and the customer must apply to the Department for any refund. Neither the vehicle manufacturer nor the dealer is entitled to a refund or credit of the tax paid by the customer.

Determining the tax rate

The rate of tax to be paid and collected on leases of motor vehicles is the rate in effect in the locality (county or city) where the lessee resides at the time the tax is due, not the locality where the dealership or finance company is located. Therefore, when filing its sales tax return, the dealer or finance company should report tax collected from the lessee under the lease, or any other taxable transaction related to the lease, as a sale in the locality where the lessee resides.

The town or city indicated in the mailing address of the lessee by itself is not always a reliable indicator of the actual county or city where the lessee resides. Instead, dealers should use the *Sales Tax Jurisdiction and Rate Lookup* on the department's Web site to determine the proper locality and rate of tax.

Examples

The following are examples of some common fact patterns involving the leasing of motor vehicles.

Example 1

A dealer agrees to lease a vehicle to a customer. The dealer determines that the customer will have a lease payment of $550 per month for a period of 36 months. All charges by the dealer, including amounts charged by DMV, are included in the $550 monthly payment. The State and local combined sales tax rate in the county where the customer resides is 8%. Sales tax due on this lease is computed as follows:

monthly payment amount	*$ 550*
months of lease term	*x 36*
total amount subject to tax	*$19,800*
tax rate - 8%	*x .08*
tax due at lease inception	*$ 1,584*

Example 2

A dealer agrees to lease a vehicle to a customer who will make a $3,000 down payment. After applying the customer's down payment, the dealer determines that the customer's monthly lease payment will be $475 for 36 months. All charges by the dealer, including amounts charged by DMV, are included in the $475 monthly payment. The combined sales tax rate in the county where the customer resides is 8%. Sales tax due on this lease is computed as follows:

monthly payment amount	*$ 475*
months of lease term	*x 36*
total lease payment amount	*$17,100*
down payment	*+ 3,000*
total amount subject to tax	*$20,100*
tax rate - 8%	*x .08*
tax due at lease inception	*$ 1,608*

Example 3

A dealer agrees to lease a vehicle to a customer. The customer is trading in a vehicle for which the dealer will allow a trade-in allowance of $5,000. The customer has no outstanding loan on the trade-in vehicle. The customer makes a cash payment of $1,000 and also receives a $1,500 manufacturer's rebate.

The dealer is charging an acquisition fee of $700, a documentation fee of $200, a DMV fee deposit of $100 and a disposition fee of $500. The dealer will refund to the customer any portion of the $100 deposit that exceeds the actual DMV charges. The acquisition fee and disposition fee will be

included in determining the monthly payment. The documentation fee and DMV fee deposit will be covered by the cash payment, and the remaining cash payment ($700) will be used as a down payment to reduce the monthly payments. The documentation fee does not meet the conditions to be exempt from sales tax, as previously described. After taking into account these and other factors, the dealer and the customer agree to a monthly payment of $550 for a term of 36 months. The combined sales tax rate in the county where the customer resides is 8%. Sales tax due on this lease is computed as follows:

monthly payment amount	*$ 550*
months of lease term	*x 36*
total lease payment amount	*$19,800*
plus documentation fee	*+ 200*
plus down payment amount	*+ 700*
plus rebate amount	*+ 1,500*
total amount subject to tax	*$22,200*
tax rate - 8%	*x .08*
tax due at lease inception	*$ 1,776*

Example 4

A dealer agrees to lease a vehicle to a customer. The customer is trading in a vehicle for which the dealer will allow a trade-in allowance of $10,000. The customer has no outstanding loan on the trade-in vehicle. After factoring in the $10,000 trade-in allowance, the dealer agrees to lease the vehicle to the customer for $400 per month for a term of 36 months. All other fees and charges made by the dealer, including DMV fees, are also included in the $400 monthly payment. The combined sales tax rate in the county where the customer resides is 8%. Sales tax due on this lease is computed as follows:

monthly payment amount	*$ 400*
months of lease term	*x 36*
total amount subject to tax	*$14,400*
tax rate - 8%	*x .08*
tax due at lease inception	*$ 1,152*

Example 5

A dealer advertises a vehicle that can be leased for $350 per month for a term of 36 months. In order to obtain the $350 monthly payment amount, a customer is required to make an up-front payment of $4,000, which is the amount charged by the dealer for the down payment and acquisition and disposition fees.

A customer agrees to lease the vehicle for $350 per month and will trade in a vehicle as part of the transaction. The dealer allows a trade-in allowance of $3,000 for the customer's vehicle, which will be applied against the

up-front payment amount of $4,000. The customer will make a $1,000 cash payment for the remaining down payment due, and a cash payment of $120 for a DMV fee deposit. The dealer has separately stated the DMV fee deposit on the lease document and will refund to the customer any portion of the $120 deposit that exceeds the actual DMV charge. The combined sales tax rate in the county where the customer resides is 8%. Sales tax due on the lease is computed as follows:

Amount subject to tax on up-front payment amount:

up-front payment amount	*$ 4,000*
less trade-in credit	*- 3,000*
amount subject to tax	*$ 1,000*

Amount subject to tax on monthly lease payment:

monthly payment amount	*$ 350*
months of lease term	*x 36*
total lease payment amount	*12,600*
plus amount subject to tax on up-front payment	*+ 1,000*
total amount subject to tax	*$13,600*
tax rate - 8%	*x .08*
tax due at lease inception	*$ 1,088*

Example 6

A dealer agrees to lease a vehicle to a customer. The customer is trading in a vehicle worth $10,000 which is subject to a loan with an outstanding balance of $4,000. The dealer will accept the trade-in vehicle subject to the loan and pay off the $4,000 balance, leaving the customer with a trade-in allowance of $6,000. After factoring in the $6,000 trade-in allowance, the dealer agrees to lease the vehicle to the customer for $450 per month for a term of 36 months. In addition, all other fees and charges made by the dealer were included in determining the $450 monthly payment. The combined sales tax rate in the county where the customer resides is 8%. Sales tax due on this lease is computed as follows:

monthly payment amount	*$ 450*
months of lease term	*x 36*
total amount subject to tax	*$16,200*
tax rate - 8%	*x .08*
tax due at lease inception	*$ 1,296*

Example 7

A dealer would ordinarily lease a particular vehicle for $420 per month. However, a customer is trading in a vehicle she owns with a trade-in value of $10,000, on which the customer still owes $12,000. The dealer agrees to

accept the trade-in vehicle and pay off the customer's balance due of $12,000. The dealer will add the $2,000 of negative equity in the trade-in vehicle to the amount used to determine the monthly payment. In addition, the customer requests that all fees and other dealer charges be included in determining the monthly payment. The term of the lease is 36 months.

After taking into account the $2,000 of negative equity in the trade-in vehicle and the other fees and charges, the dealer increases the monthly lease payment amount to $500. Sales tax due on this lease is computed as follows:

monthly payment amount	*$ 500*
months of lease term	*x 36*
total amount subject to tax	*$18,000*
tax rate - 8%	*x .08*
tax due at lease inception	*$ 1,440*

Computation of total monthly payments for leased vehicles primarily used in a business or trade more than 50% of the time

There is a special rule for computing the amount of the total monthly lease payments subject to sales tax at the inception of certain long-term motor vehicle leases where more than 50% of the vehicle's use is intended to be in the lessee's business or trade (for example, a fleet lease).

The special rule applies only if the following conditions are met:

- the lease includes an indeterminate number of options to renew or other similar contract provisions or the lease includes 36 or more monthly options to renew beyond the initial term of the lease, and

- the lease agreement contains a separate written statement, signed by the lessee, under which the lessee certifies under penalty of perjury that the lessee intends that more than 50% of the vehicle's use will be in a business or trade of the lessee.

If the special rule applies, the total of all the payments due for the first 32 months of the lease, or for the period of the initial lease term, if longer than 32 months, is the total of the monthly payment subject to tax at the inception of the lease. The tax must be computed on that total and paid and collected at that time. The payment under each option to renew or combination of options exercised after the first 32 months, or after the initial lease term if longer, is also subject to tax. However, tax on these payments is paid and collected on the date that each subsequent lease payment is required to be made.

Example 8

A taxi company (lessee) enters into a fleet lease agreement to lease vehicles to be used as taxis for its business. The agreement provides that the lessee must lease each vehicle for a term of more than one year, after which time

the lessee has an indeterminate number of options to renew the lease on a monthly basis. The lease agreement contains a separate written statement signed by the lessee under which the lessee certifies, under penalty of perjury, that the vehicles will be used in its business more than 50% of the time. Therefore, the initial term of the lease is deemed to be 32 months.

The lessee leases each vehicle for $450 per month. Any other fees or charges by the dealer are included in the $450 payment. The combined sales tax rate in the county where the lessee does business is 8%. Sales tax due on each lease is computed as follows:

Initial lease term (32 months)

monthly payment amount	*$ 450*
months of initial lease term	*x 32*
total initial amount subject to tax	*$14,400*
tax rate - 8%	*x .08*
tax due at lease inception	*$ 1,152*

Each month after initial 32 months

monthly payment amount	*$ 450*
tax rate - 8%	*x .08*
tax due when each lease payment is due	*$ 36*

Dealer financing of the sales tax

In some instances, the lessee may want to finance the tax due at the time of entering into the lease. In this case, the lessee may ask the dealer/lessor to lend the lessee an amount equal to the tax due on the lease and to add the amount of that loan into the total to be paid under the lease. In effect, the lessor would lend the lessee an amount equal to the tax due and then build repayment of this loan into the lease payments due under the lease.

If the dealer/lessor is willing to lend the amount of tax due to the lessee, it will have to re-compute the total amount of the monthly lease payments and thus the total amount due under the lease, in order to recover the principal amount of the loan, plus any interest on that principal. As a consequence of the dealer/lessor increasing the amount of the monthly lease payments to recover the money loaned (plus any interest), the dealer/lessor will also have to increase the amount of sales tax due on the increased lease payments. This will result in a higher tax due than if the lessee paid the tax in full at the time of entering into the lease.

Regardless of how the dealer re-computes the lease payments to recover the money lent to the lessee, the dealer/lessor is still required to remit tax due under the lease based on the full amount of the monthly payments, including the increase resulting from the loan. One way to compute this mathematically is to use the following example that "grosses up" the lease

payments to include the tax due, based on the applicable State and local tax rate. Whether the dealer/lessor uses the method in Example 9 or uses another method to compute the lease payment, the dealer/lessor must always be sure to remit tax on the total of the payments due under the lease, however those payments were computed.

Example 9

A dealer agrees to lease a vehicle to a customer who has no trade-in and is making no down payment. All fees and other charges made by the dealer are included in the monthly payments due under the lease. In addition, the dealer will loan the customer an amount equal to the sales tax and will recompute the amount of the monthly lease payment to include repayment of the loan. Before taking the loan into account, the dealer determined that the customer's monthly lease payment for the vehicle would be $500 for 36 months, resulting in total payments of $18,000. The combined sales tax rate in the county where the customer resides is 8%. If the customer were to pay the sales tax due in cash at the inception of the lease, the tax due would be $1,440 ($500 x 36 months x 8%). However, since the dealer is loaning the customer money for the sales tax, the dealer will increase the amount of the monthly payment to include repayment of the loan (including any interest on the loan principal). This will result in a higher monthly lease payment and a greater amount of tax due. In this situation, one method to calculate the total amount of the lease payments on which tax is due and the amount of tax due on those increased payments, is shown on the worksheet below.

Worksheet

1. Enter 1.00	*1.00*
2. Enter the combined state and local tax rate as a decimal	*.08*
*3. Subtract line **2** from line **1***	*.92*
*4. Divide line **1** by line **3** and round the total to 3 decimal places*	*1.087*
5. Enter the total taxable amount of the lease	*$18,000*
*6. Multiply line **5** by the percentage on line **4***	*$19,566*
*7. Multiply line **6** by the tax rate decimal on line **2***	*$ 1,565*

*The amount on line **7** is the sales tax due on the lease if the dealer is not charging interest or a finance charge on the amount of the loan in respect to the sales tax. If the dealer chooses to charge interest or a finance charge on the money loaned for the sales tax, continue with line **8**.*

*8. Enter the total amount of the interest or finance charge the dealer will charge on the amount on line 7**	*$ 149*
*9. Enter the amount from line **5***	*$18,000*
*10. Add lines **8** and **9***	*$18,149*
*11. Enter the amount from line **4***	*1.087*
*12. Multiply line **10** by line **11***	*$19,728*
*13. Multiply line **12** by the tax rate decimal on line **2***	*$ 1,578*

*The amount on line **13** of the above worksheet is the sales tax due on the lease when interest or a finance charge is imposed on the money loaned for the sales tax.*

** (For example, the interest on a loan of $1,565 (the amount of the sales tax) at 6% interest for 36 months would equal $149.*

A blank copy of a worksheet for dealers to use is contained in Appendix A on page 20 of this publication.

It is important to remember that the sales tax due on the receipts from a long-term lease is based on the total of the payments due under the lease ([monthly payment x number of months in lease term] + other payments subject to tax). It is up to the dealer/lessor to decide the amount of the monthly payment, taking into account all of its costs, the time value of money, profit, and any other factors it wants to consider. Once the dealer determines that amount, the dealer can calculate the sales tax due by multiplying the total of the payments due under the lease, plus other taxable amounts, by the applicable combined State and local tax rate. The dealer must always remit that amount of tax with its sales tax return.

Motor vehicle leases entered into outside of New York State

If a lessor and lessee enter into a motor vehicle lease outside of New York State and the lessee later brings the vehicle into New York State, the payments remaining on the lease are subject to New York State and local sales and use taxes under certain circumstances. The remaining payments are subject to sales tax if the lessee either was a New York resident at the time of entering into the lease or becomes a resident of New York and brings the vehicle into New York.

If there is less than one year remaining on the lease term after the vehicle is brought into the State, sales tax would be due on each monthly lease payment at the time the lessee makes payment to the lessor. The lessor, if not already registered, is required to register for sales tax purposes, as explained below, and must collect tax on each of those remaining lease payments.

If there is more than one year remaining on the lease term after the vehicle is brought into the State (and the lessee is, or has become, a resident), then the "remaining lease period" would be a long-term lease and sales tax would be due on the total of the remaining monthly lease payments as described

earlier in this publication (see *General*, on page 5).

A lessee is considered a resident of New York if:

- the lessee has a permanent place of abode in New York State; or
- the lessee is engaged in carrying on in New York State any employment, trade, business, or profession in which the vehicle will be used in this state. (For information about long-term motor vehicle leases by nonresidents, see *Certain long-term motor vehicle leases by nonresidents not subject to tax*, below.)

If the lessor retains an ownership interest in the vehicle and is not registered for sales tax purposes at the time the lessee brings the vehicle into the state, the lessor must register for sales tax purposes by applying online using the *Online Services* at *www.tax.ny.gov*, or by filing Form DTF-17, *Application to Register for a Sales Tax Certificate of Authority*, within 30 days after the first day the leased vehicle is brought into New York by the lessee, and must collect and remit sales tax due to New York State on the remaining lease payments. However, the lessee may be able to claim a credit for any sales or use taxes paid to the state in which the lease was originally entered into, if that state allows a corresponding credit for tax paid in this state.

Certain long-term motor vehicle leases by nonresidents not subject to tax

New York State and local sales taxes do not apply to the long-term lease of a motor vehicle, even if the lessee enters into the lease and takes physical possession of the vehicle in New York State, if at the time of taking delivery, all of the following conditions are met:

- the lessee is a nonresident of New York State;
- the lessee has no permanent place of abode in New York State;
- the lessee is not engaged in carrying on in New York State any employment, trade, business, or profession in which the vehicle will be used in this state;
- the dealer does not issue to the lessee a New York State temporary or other similar certificate of registration as provided in section 420 or 420-a of the New York Vehicle and Traffic Law;
- the lessee does not register the vehicle in New York State prior to registering the vehicle in another state or jurisdiction; and
- prior to the time the lessee takes delivery of the vehicle, the lessee gives the dealer a properly completed Form DTF-820, *Certificate of Nonresidency of New York State and/or Local Taxing Jurisdiction.*

A dealer who obtains Form DTF-820 from the lessee prior to the time the vehicle is delivered to the lessee, and who retains Form DTF-820 and makes

it available for inspection by the Tax Department, will not be liable for failing to collect sales tax on the lease transaction, provided the dealer does not know that the document issued by the lessee is false.

Appendix A

Worksheet to compute sales tax when the dealer loans the money for the sales tax

1. Enter 1.00	1.00
2. Enter the combined state and local tax rate as a decimal	
3. Subtract line **2** from line **1**	
4. Divide line **1** by line **3** and round the total to 3 decimal places	
5. Enter the total taxable amount of the lease	
6. Multiply line **5** by the percentage on line **4**	
7. Multiply line **6** by the tax rate decimal on line **2**	

Are you charging interest or a finance charge on the loan of the sales tax money?

☐ No. The amount on line **7** is the sales tax due.

☐ Yes. Continue with line **8**.

8. Enter the total amount of the interest or finance charge the dealer will charge on the amount on line **7**	
9. Enter the amount from line **5**	
10. Add lines **8** and **9**	
11. Enter the amount from line **4**	
12. Multiply line **10** by line **11**	
13. Multiply line **12** by the tax rate decimal on line **2**	

The amount on line **13** is the sales tax due on the lease when interest or a finance charge is imposed on the money loaned for the sales tax.

Notes

New York State Tax Department

Online Services

Create an Online Services account and log in to:

- make payments
- file certain returns and other tax forms
- view your account and filing information
- change your address
- receive email notifications
- respond to bills and notices

Access is available 24 hours a day, 7 days a week (except for scheduled maintenance).

www.tax.ny.gov

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Need help?

Visit our Web site at ***www.tax.ny.gov***

- get information and manage your taxes online
- check for new online services and features

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.

Telephone assistance

Sales Tax Information Center:	(518) 485-2889
To order forms and publications:	(518) 457-5431

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

NEW YORK STATE | Department of Taxation and Finance

Publication 838

A Guide to Sales Tax for Automobile Dealers

Pub 838 (12/12)

About this publication

As an automobile dealer (hereafter called *dealer*) in New York State, you have many duties and responsibilities for the collection of New York State and local sales tax, and the payment of use tax. In general, hereafter all these taxes will be called *sales tax.* This publication provides a general explanation of sales tax, and includes information about sales tax registration and record-keeping responsibilities. It also explains which sales and services are subject to tax; how to apply sales tax to lease or rental transactions; general use tax rules for such topics as demonstrators, mixed-use, and loaner vehicles; how sales tax applies to sales and purchases of parking, garaging, and storage; how to determine the correct tax rate; dealer purchases and exempt sales; sales to exempt organizations; and the lemon law. In addition, the appendix includes definitions; record-keeping and return information; and general information about the sale, transfer, or assignment of business assets.

To obtain tax bulletins, forms, technical memoranda (TSB-Ms), publications, and other information from the Tax Department, see *Need help*? on the back cover.

For information about motor vehicle registrations and similar matters, see the New York State Department of Motor Vehicles (DMV) Web site at *www.dmv.ny.gov*.

NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. 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 contained in a publication. Publications are updated regularly and are accurate on the date issued. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

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Part I – Introduction

Sales and use taxes

New York State and local sales tax is imposed on the receipts from the sale of tangible personal property and certain services in New York State. *Tangible personal property* includes motor vehicles (see Appendix A for the definition of *motor vehicle*), as well as parts and accessories. In addition, charges for maintaining, servicing, repairing, and installing tangible personal property in or on motor vehicles are subject to sales tax.

As a dealer in New York State, you will be making sales of motor vehicles and related services. You may also be issuing and accepting New York State sales tax exemption documents. Therefore, you must register for sales tax purposes and collect sales tax on the sales you make. As a registered sales tax vendor, you become a trustee on behalf of the state for the tax collected. Officers and employees who are responsible for collecting and remitting sales tax may be personally liable for any tax required to be collected but not remitted.

In addition, state and local use tax (hereafter called *use tax*) may apply to the use, within New York State, of taxable tangible personal property and certain services by residents (see Appendix A for the definition of *resident*), including dealers in New York State. For general information on use tax, see page 18.

Dealers can visit the Tax Department's Web site (*www.tax.ny.gov*) and click on subscribe, to receive emails announcing newly posted content and other general information.

Part II – Vendor responsibilities

Authority to collect sales and use taxes

A dealer in New York State must register for sales tax purposes with the Tax Department, and obtain a *Certificate of Authority*. The *Certificate of Authority* gives a dealer the authority to collect state and local sales and use tax and to issue and accept most sales tax exemption documents. See Part IX for more information about exempt sales.

Applying for your *Certificate of Authority*

You must apply for a *Certificate of Authority* at least 20 days before beginning business operations. For the most up-to-date information on how to apply, see Tax Bulletin *How to Register for New York State Sales Tax* (TB-ST-360).

Penalties for operating without a valid *Certificate of Authority*

A dealer who makes taxable sales, or issues or accepts exemption documents, before receiving a valid *Certificate of Authority* is subject to a penalty of up to $10,000. For more information, see Tax Bulletin *Sales and Use Tax Penalties* (TB-ST-805).

In addition to the *Certificate of Authority* requirement, dealers also have record-keeping, filing, and payment responsibilities. For more information, see Appendix B.

A dealer that is acquiring business assets of an existing business may be held liable for any sales taxes owed to the Tax Department by the seller or transferor. See Appendix C.

Part III – Taxable sales of motor vehicles

Sales of motor vehicles

This part explains how to determine the amount subject to tax on sales of motor vehicles. Special rules apply to leases of motor vehicles for one year or more (see page 17).

Determining the receipt subject to sales tax on sales of motor vehicles

When a dealer sells a motor vehicle to a resident of New York State, the dealer must collect sales tax from the customer, unless the sale is exempt (see Part X). The amount subject to tax includes all the following items:

- the sale price of the vehicle;
- warranty fees (see page 15);
- transportation and destination charges;
- dealer-installed optional equipment and accessories, unless otherwise exempt;
- advertising charges;
- dealer preparation fees;
- certain dealer-imposed tire disposal fees (see page 15); and
- the amount of a customer rebate or customer incentive, provided or reimbursed by the manufacturer or any other third party, that is applied against the amount due under the sales agreement. Examples include:
  - a customer factory rebate;
  - first-time-buyer incentive;
  - college student incentive;
  - or other similar rebate or payment.

For this purpose, rebates and incentives do not include factory-to-dealer rebates or other incentives which reduce the dealer's cost of the vehicle.

The receipt amount subject to tax does **not** include:

- any trade-in allowance for motor vehicles taken in trade (see *Trade-ins* below);
- any fees to be paid by the customer for financing the motor vehicle, such as interest;
- any charge for gap insurance if the charge is reasonable and separately stated;
- any rebates, discounts, or similar incentives provided by the dealer for which the dealer is not reimbursed by the manufacturer or any other third party;
- factory-to-dealer incentives;
- certain documentation fees (see page 12); and
- any fees imposed by the DMV, such as vehicle registration, title, and vehicle inspection fees (see pages 13 and 16).

When a dealer sells taxable and non-taxable items together for a single price, the entire receipt from the sale is subject to sales tax. However, if the price of the separately available nontaxable item is reasonable and separately stated on any invoice or other statement of price given to the customer, sales tax is due only on the price of the taxable item.

Example: *A dealer sells a new van with a hydraulic wheelchair lift. The van is subject to sales tax. The price of the lift (including installation), as a prosthetic aid, is exempt from tax if it is reasonable and the dealer separately states it on the invoice or statement of price given to the customer. If the dealer sells the van and the hydraulic lift as a unit for a single price, then the entire receipt is subject to sales tax.*

For information about the exemption for prosthetic aids, see page 28.

Trade-ins

The amount of the credit the dealer gives to the purchaser for any motor vehicle (or other tangible personal property) taken in trade, and accepted as part payment on the purchase of a motor vehicle, may be deducted from the taxable receipt amount, but only if the motor vehicle (or other property) taken in trade is intended to be resold, even if to a scrap yard.

Example: *A customer and a salesperson arrive at a price of $32,000 for a new motor vehicle, which includes the cost and all taxable optional equipment and accessories. (There are no rebates.) They also agree on a trade-in value of $8,500 for the customer's current vehicle, which the dealer will take in trade and resell. The amount subject to sales tax is calculated as follows:*

New vehicle	*$32,000*
Minus trade-in value	*- 8,500*
Taxable amount	*$23,500*

Discounts

Any discount given to the customer by the dealer that is not reimbursed by a third party (including affiliated entities), and that reduces the price of the motor vehicle, must be deducted from the amount subject to sales tax. Examples include discounts or price reductions negotiated between a customer and a salesperson or dealership, such as trade discounts or fleet discounts. However, early payment discounts granted by a dealer (to encourage prompt payment) must be included in the amount subject to tax.

Rebates, coupons, and cash allowances

The amount of rebates, coupons, and similar cash allowances given to the customer by the dealer, **that are not reimbursed** to the dealer by the manufacturer or another third party, **must be deducted** from the amount subject to sales tax.

Example: *A customer and a salesperson arrive at a price of $25,000 for a new motor vehicle prior to any rebates. This includes the cost of all taxable options and equipment and any other taxable charges. The manufacturer offers the customer a rebate of $2,000 (which it will reimburse to the dealer), and the dealership offers its own promotional rebate of $1,000. In addition, a credit card company has offered the customer a $500 rebate because the customer will purchase the vehicle using their credit card. The credit card company will reimburse the dealer $500. The amount subject to sales tax is calculated as follows:*

New vehicle (prior to rebates)	*$25,000*
Minus dealer's rebate	*- 1,000*
Taxable amount	*$24,000*

In this example, since the dealer will be reimbursed by the manufacturer and the credit card company, neither the $2,000 manufacturer's rebate nor the $500 credit card rebate may be deducted from the amount subject to sales tax. However, the dealer's rebate of $1,000, which is not reimbursed by any other third party, must be deducted from the taxable amount.

Documentation fees

Dealers charge documentation fees to prepare, on behalf of purchasers, the paperwork needed to obtain titles and registrations for vehicles. In the case of a sale of a vehicle, these fees are not subject to tax if the amount of the

fee is separately stated and reasonable. The fee will be presumed reasonable if the amount is equal to or less than the amount permitted under the New York State Department of Motor Vehicle rules.

The preceding information applies only to sales of motor vehicles. For information about documentation fees for long-term motor vehicle leases, see Publication 839, *A Dealer's Guide to Sales And Use Taxes on Long-Term Motor Vehicle Leases in New York State*.

Vehicle registration and title fees

If a dealer obtains the vehicle's title and registration on behalf of the purchaser, and the dealer separately states the actual amount of title and registration fees on the invoice or other statement of price given to the customer, the fees are not subject to sales tax.

These fees are also not subject to tax if the dealer charges the customer a separately stated, estimated amount *(DMV fee deposit)* for registration and title fees, does not include the deposit on the purchase invoice or other statement of price, and later refunds to the customer the amount of the deposit that exceeded the exact fees. However, if the dealer charges the customer more than this exact amount, the excess is subject to tax.

Insurance proceeds

A dealer, who receives insurance proceeds to compensate for a vehicle that is destroyed while in inventory and the title to the destroyed vehicle is transferred to the insurer, is not required to pay sales tax on the insurance settlement amount.

> Example: *Dealer A agrees to transfer a new vehicle from its inventory to Dealer B, f.o.b. – delivery point (the ownership and liability passes from Dealer A to Dealer B at the point where the vehicle is delivered, rather than the point it was shipped from). The vehicle is destroyed while in transit. Dealer A then transfers the vehicle's title to Dealer A's insurer, who pays Dealer A insurance proceeds to compensate for the loss. The insurance proceeds are not subject to tax.*

Free and no charge services

Coupons for a free service, such as an oil change, are not subject to tax, unless the coupon is a manufacturer's coupon or other third-party coupon for which the dealer will be reimbursed by a third party. For information on repair and maintenance services provided by a prepaid maintenance contract, see page 15.

Generally when a dealer provides a free service, such as an oil change, the dealer owes use tax on the property transferred as part of this service (for example, oil and oil filters) if the property was originally purchased for resale. However, if the dealer is contractually obligated to provide the service at no charge, the dealer will not owe use tax on any property transferred as part of the service.

Employee incentives

Manufacturers occasionally offer their employees, the employees of the manufacturer's affiliates, or dealers and their employees cash incentives to purchase certain models of motor vehicles. If the manufacturer requires that the employee receive the full benefit of the incentive offered by the manufacturer, the amount of the incentive is deducted from the amount subject to tax. Also, see *Rebates, coupons and cash allowances* on page 12.

Part IV – Other sales made by dealers

Sales of property and services by a dealer

Generally, sales of tangible personal property and certain services by a dealer are subject to sales tax. Dealers can purchase property that is intended for resale exempt from sales tax by issuing Form ST-120, *Resale Certificate*, to their suppliers at the time of purchase. For information about sales to other dealers or repair facilities, see *Dealer's use of resale certificates*, on page 24.

Servicing customers' motor vehicles

Charges for the services of maintaining, servicing, or repairing a vehicle are subject to sales tax. *Maintaining*, *servicing*, and *repairing* are terms used to cover all activities that relate to keeping a motor vehicle in a condition of fitness, efficiency, readiness, and safety, or restoring the vehicle to these conditions. Charges for the service of installing parts and other items of tangible personal property (for example, charges for the installation of car stereos or car starters) in or on a motor vehicle are also subject to sales tax. Any separate charges for fees, such as shop supplies and hazardous waste disposal fees, are also subject to tax.

Routine maintenance services are all taxable, such as tune-ups and oil changes; troubleshooting and diagnostic work; mechanical, electrical, fuel, cooling, braking, steering, suspension, exhaust, and other automobile systems work; and bodywork. Taxable services also include activities such as towing a disabled motor vehicle or detailing a vehicle.

For additional sales tax information specific to auto repair and auto body shops, see Tax Bulletin *Auto Repair and Body Shops* (TB-ST-40).

Sales tax on the servicing of motor vehicles is based on the total amount charged for the service (including charges for parts, supplies, and labor). The form of payment received from the customer (for example, an insurance check) has no effect on the amount of tax due. The rate of the combined state and local sales tax is the rate in effect in the taxing jurisdiction where the property serviced is delivered to the customer (or the customer's designee).

The taxing jurisdiction where such services are made could be different from the taxing jurisdiction where the dealership is located. For example, if a dealer sends a technician to a customer's home to repair a vehicle, sales

tax is calculated using the rate in effect for the taxing jurisdiction where the customer's home is located.

Note: Motor vehicle insurers must file information returns with the Tax Department, and report any payments made to New York vendors (including auto repair shops), under an insurance contract for servicing or repairing motor vehicles. For more information, see TSB-M-09(8)S, *New Requirement for the Filing of Information Returns for Insurers of Motor Vehicles*, and TSB-M-09(8.1)S, *Additional Guidance Relating to the New Requirement for the Filing of Information Returns for Insurers of Motor Vehicles.*

Parts, accessories, and supplies

Sales of parts, accessories, tires, supplies, and other items of tangible personal property are taxable at the combined state and local rate in effect where the property is delivered to the customer. However, if the purchaser will be reselling the item (for example, if the purchaser is a dealer or independent repair facility), they can use Form ST-120 to make the purchase exempt from tax.

Waste tire management and recycling fee

The state-imposed waste tire and recycling fee is not subject to sales tax. This fee, administered by the Tax Department, is $2.50 for every new tire sold. Tire sellers are allowed to retain twenty-five cents of the fee to cover the cost associated with collecting it.

Note: If a dealer's waste tire management and recycling costs exceeds twenty-five cents, the dealer may include the excess in the advertised price of the tire, or the dealer may state the cost separately. Since this additional charge is part of the sales price of the tire, this fee is subject to sales tax. For more information, see TSB-M-08(6)S, *Sales Tax Treatment of Waste Tire Management and Recycling Charges Imposed by Tire Sellers.*

Charges for transportation services

Sales tax applies to the charge for transportation services provided using limousines, black cars, and certain other motor vehicles with a driver. For more information, see TSB-M-09(2)S, *Sales Tax Imposed on Certain Transportation Services*; TSB-M-09(7)S, *Additional Guidance Relating to the Sales Tax on Certain Transportation Services*; and TSB-M-10(15)S, *Sales Tax on Certain Transportation Services Amended to Exclude Livery Service Provided by an Affiliated Livery Vehicle in New York City*.

Extended warranties or service contracts

When a dealer sells a warranty, extended warranty, or service contract, the sale is subject to sales tax at the same jurisdictional rate as the tangible personal property (motor vehicle) covered by the contract. There is no additional sales tax due on any tangible personal property and services provided to the customer at no charge under the warranty contract (for example, free oil changes provided as part of a service contract).

When the work provided to the customer is only partially covered under the warranty contract, any additional charges are subject to sales tax.

Goodwill repairs

When a dealer, solely at its own discretion, makes a repair at no charge that is not covered under a warranty or service contract, the dealer would owe use tax on any property transferred as part of this service if the property was originally purchased for resale. However, if the dealer is required by the manufacturer or other third party, or by state law, to make the repair at no charge, the amount reimbursed to the dealer by the third party is not subject to tax, and the dealer would not owe use tax on any property transferred as part of the services.

Roadside assistance plan

Charges to participate in a roadside assistance plan, a multi-service driving plan, or similar plan, are not subject to sales tax. However, any charge for any tangible personal property associated with the plan and installed on the vehicle or transferred to the customer is subject to sales tax. Where charges for the plan and the tangible personal property installed on the vehicle are not separately stated on any written receipt given to the customer, the entire charge is subject to sales tax.

Motor fuel and diesel motor fuel

Sales of gasoline and other motor fuels to customers at a filling station located at the dealership are subject to sales tax. Filling stations must also file Schedule FR, *Sales and Use Tax on Qualified Motor Fuel and Highway Diesel Motor Fuel*, in addition to their regular sales tax return. Schedule FR provides detailed instructions about filling station reporting requirements, including how to compute the retail sales tax due and how to claim a credit for the prepaid sales tax passed through to the dealer by the supplier.

Free tank of gas provided with the sale of a vehicle

Gasoline or other fuel provided by the dealer as part of the sale of the new vehicle is considered a component part of the vehicle sold. When the dealer purchases gas at a retail filling station, the dealer must pay the sales tax at the time of purchase and then apply for a refund, using Form FT-500, *Application for Refund of Sales Tax Paid on Petroleum Products*. For more information, see Tax Bulletin *How to Apply for a Refund of Sales and Use Tax* (TB-ST-350). Dealers must keep detailed records (such as the window sticker that lists a free tank of gas) of the amount of fuel that is given away on a per-vehicle basis.

Fuel provided by the dealer to the customer as goodwill (and not included as part of the sales price of the vehicle) is not eligible for a refund.

New York State inspections

The service of performing required New York State safety and emissions inspections is not subject to sales tax. Purchases of enhanced emissions inspection equipment are not subject to sales tax; for more information see page 26. Any charges for repairs performed based on the findings of an inspection are subject to New York State and local sales tax.

Warranty repairs

When a dealer or repair shop provides maintenance, repairs, or other services without charge to a customer under a warranty agreement, those services are not subject to sales tax (including a “come back” repair to continue to address a problem). However, if a warranty provider

reimburses a dealer for performing warranty service, that reimbursement is normally subject to tax, unless the warranty provider issues Form ST-120 to the dealer, making the reimbursement not subject to tax. For information on loaner cars provided under a warranty agreement, see page 19.

Note: For repairs mandated by the Lemon Law, see Part XI, beginning on page 32.

Clothing

Dealers that sell clothing (such as hats or T-shirts) must charge sales tax based on rates for clothing. See Publication 718-C, *Sales and Use Tax Rates on Clothing and Footwear*, which lists up-to-date tax rates on clothing sales.

Part V – Leases or rentals of motor vehicles

General

This section provides general sales tax information about leases or rentals of motor vehicles. The Tax Law provides special rules for calculating and paying state and local sales and use taxes on certain long-term vehicles. For detailed information, see Publication 839, *A Dealer's Guide to Sales and Use Taxes on Long-Term Motor Vehicles in New York State.*

Long-term lease

A *long-term lease* covers a period of one year or more. However, a lease covering a period of less than one year is considered a long-term lease if it includes one or more options to renew (or similar contract provisions) that, if exercised, would make the total period of the lease one year or more.

For long-term leases for vehicles with a gross vehicle weight of 10,000 pounds or less, the dealer must collect sales tax on the total amount due for the entire lease period (including any option to renew or similar provision), using the combined state and local tax rate in effect in the locality where the lessee resides, not the dealership's location. The dealer must submit the tax to the Tax Department at the inception of the lease.

Short-term lease

A *short-term lease* covers less than one year (including any options to renew). For short-term leases, the dealer must collect sales tax at the time of each lease or rental payment. The dealer calculates the tax on the total lease or rental charge for each period, using the combined state and local sales tax rate in the locality where the vehicle is delivered to the customer.

The sale of an optional insurance policy (including a collision damage waiver) to the customer, if separately stated, is not taxable and must be deducted from the amount subject to tax. However, the charge for this insurance is subject to tax if not separately stated.

Special tax on passenger car rentals

In addition to the sales tax imposed on the receipts from a short-term lease of a motor vehicle (see above), a 6% special tax is currently imposed on the receipts from any rental of a passenger car rented or used in New York

State, when the period of the lease is less than one year. The tax is imposed on all rental charges, including all incidental charges (such as additional mileage charges). For more information, see TSB-M-09(1)S, *Increase in the Special Tax on the Rental of Passenger Cars.*

Special supplemental tax on passenger car rentals within the MCTD

In addition to the applicable state and local sales and use tax, and the 6% special tax, all passenger cars that are rented or used within the Metropolitan Commuter Transportation District (MCTD) are subject to an additional 5% *special supplemental tax* if the lease is for less than one year. The MCTD includes New York City and the counties of Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester. For more information, see TSB-M-09(6)S, *Special Supplemental Tax on the Rental of Passenger Cars Within the Metropolitan Commuter Transportation District.*

Part VI – Use tax

General

Dealers in New York State must pay use tax directly to the Tax Department when they purchase taxable property or services, and for any reason did not pay tax at the time of purchase (unless entitled to an exemption). There is a distinction between sales tax that should have been paid and use tax. However, for purposes of simplicity, the tax required to be paid is referred to in this publication as use tax. For more information, see Tax Bulletin *Use Tax for Businesses* (TB-ST-910).

Listed below are some common situations when a dealer would owe use tax to the Tax Department.

Use tax examples

Personal use of a vehicle by a dealer

Vehicles held in a dealer's inventory for resale, that are used occasionally for business or pleasure by the dealer or one of its owners or employees, are considered mixed-use vehicles subject to state and local use tax on the cost of the vehicle. For the use tax rules for mixed-use vehicles, see page 20.

> Example: *A dealer purchases a motor vehicle for resale, and an employee uses the car for personal transportation. The vehicle is considered a mixed-use vehicle and subject to use tax.*

Dealer donates a vehicle

Vehicles held in a dealer's inventory for resale that are later donated are subject to use tax on the cost of the vehicle.

> Example: *A dealer purchases a vehicle for resale but then donates the vehicle to the local senior citizens program. The dealer owes use tax based on the dealer's cost of the vehicle.*

Example: *A dealer donates a car from inventory to a shopping mall operator to raffle off the car. Mall customers may enter the raffle to get a chance to win the car. The dealer donating the car is not eligible for the resale exemption and must pay use tax on the dealer's cost of the vehicle.*

Out-of-state purchase

When a dealer purchases taxable property from a vendor located outside New York without paying New York State and local sales taxes, and then later uses that property in New York, the dealer is required to pay use tax.

See page 22 for an example of an out-of-state purchase.

Use tax rules for demonstrators, loaners, and mixed-use vehicles

The following applies to vehicles held in a dealer's inventory that are used as demonstrators, loaners, and mixed-use vehicles.

Demonstrators

Vehicles held in a dealer's inventory exclusively for resale, but used for demonstration purposes to prospective customers, are not taxable if used solely for customer demonstration.

Loaners

Dealers often provide customers with a loaner vehicle to drive while repairs are being made (whether under warranty or not) on the customer's vehicle. The tax treatment of a loaner can depend upon whether the customer is contractually entitled to a loaner car.

If a dealer takes a vehicle out of inventory, and loans it to customers without charge, or at a rate that does not reflect the fair market rental value, and not all of those customers using the vehicle are contractually entitled to a loaner, then the vehicle is subject to use tax based on the dealer's purchase price, plus delivery charges.

However, if the dealer takes a vehicle out of inventory and uses it **exclusively** to provide loaners to customers who are contractually entitled to a loaner car, then no use tax is due.

Loaners provided to customers while warranty work is being performed

If the car is used exclusively as a loaner and the manufacturer reimburses the dealer for the cost of supplying the vehicle as part of the warranty agreement or other dealer-sponsored program, the charge to the manufacturer is exempt from sales tax. The manufacturer must provide the dealer with a properly completed Form ST-120.

Loaners provided to customers through contracts with car rental agencies

If the dealer contracts with a car rental agency to provide free loaners to customers and the customer is contractually entitled to a loaner, the dealer can rent the car exempt from tax by providing the rental agency with Form ST-120. However, if the customer is not contractually entitled to a

loaner, the dealer must pay sales tax (including any special taxes) on the rental, to the car rental agency.

Dealers may also rent cars to provide a customer with a loaner at their discretion, rather than as part of the manufacturer's warranty or a dealer's contractual obligation. In this case, the use of the loaner would be considered a promotional use and subject to tax on the rental rate.

Vehicles loaned to a high school driver education program

No tax is due for vehicles loaned without charge to a high school driver education program.

Mixed-use vehicles

Any motor vehicle held in a dealer's inventory for resale, but used occasionally for business or pleasure by the dealer or one of its owners or employees, is subject to tax as a *mixed-use* vehicle. Use tax due on a mixed-use vehicle must be reported and paid on the dealer's sales tax return under *purchases subject to use tax* with the sales tax return that covers the period of use.

1% method for each month of mixed use

Use tax on a mixed-use vehicle may be calculated by multiplying the dealer's total cost of the vehicle by 1% per month, for each month of mixed use. That amount is then multiplied by the sales tax rate in effect in the taxing jurisdiction where the dealership is located.

A vehicle has been used for a month of mixed use if it has been used during any part of the month. A motor vehicle dealer may pay use tax on mixed-use vehicles based on the 1% method, provided that the vehicle is held in inventory, is available for sale, and is used by the dealer:

- for six months or less as a mixed-use vehicle with no mileage restriction; or
- for more than six months but no more than one year, and the mileage does not exceed 15,000 miles for the entire 12 months.

If mileage exceeds 15,000 miles and the vehicle is used for more than six months, or if the vehicle is used by the dealer for more than 12 months, regardless of mileage, use tax is due based on the dealer's total cost of the vehicle, plus penalties and interest. Penalties and interest are calculated from the due date of a tax return covering the first time the vehicle was used. Credit is allowed for use tax already paid using the 1% method.

Note: If a vehicle was previously used as a mixed use vehicle but it can be documented that no mixed use occurred with the respect to that vehicle in a subsequent month, no use tax will be due for that vehicle for that month.

Vehicles that do not qualify for the 1% method

A vehicle does not qualify for the 1% method of computing use tax if:

- the dealer seeks or intends to seek a trade-in allowance on the vehicle; or
- the dealer depreciates or takes an investment tax credit for the vehicle.

If a vehicle is disqualified under either of these conditions but the dealer had calculated its use tax under the 1% method, the use tax is due on the dealer's total cost of the vehicle, plus penalties and interest, calculated from the due date of a tax return covering the first time the vehicle was used. Credit is allowed for use tax already paid using the 1% method.

A dealer's total cost of a new vehicle, for purposes of calculating use tax, includes the total invoiced cost plus delivery charge. For a used vehicle, the dealer's total cost includes the purchase price or trade allowance, plus the value of all repairs made to the vehicle since being acquired by the dealer. For a vehicle leased to a dealer for a year or more, the dealer's total cost includes the total amount of the lease payments for the entire term of the lease, plus any amount charged for renewal options.

Any vehicle assigned to a family member who is not an owner, officer, or employee of the dealer, does not qualify for the 1% method of calculating use tax. Tax is due on the entire cost of the vehicle. The mixed-use vehicle must be held in inventory and be available for sale. For more information, see *Family members* on page 29.

Record-keeping rules for vehicles that qualify for the 1% method

Dealers must maintain adequate records to verify the use of a vehicle as a mixed-use vehicle. All the following information must be retained for each vehicle:

- stock number and vehicle identification number (VIN);
- name and title of person to whom the vehicle is assigned;
- dates assigned and dates returned;
- mileage at date of assignment and date of return;
- disposition of vehicle;
- whether registration is in the dealer's name or the vehicle is used with dealer plates;

- whether depreciation or an investment tax credit has been or will be claimed on the vehicle; and

- whether a trade-in allowance has been or will be taken on the vehicle.

If records are not properly maintained for any mixed-use vehicle, use tax is due on the total cost of the vehicle to the dealer, with interest and penalties due from the date of the first use by the dealer.

Property purchased and used out of state

If a vehicle or other tangible personal property is purchased and delivered outside the state and used outside the state, the amount of use tax owed may be reduced, depending on how long the vehicle was used before entering New York.

If a vehicle or other property is used outside the state for less than six months prior to use within the state, the entire purchase price of the property is subject to use tax.

If a vehicle or other property is used outside the state for more than six months prior to use within the state, the amount subject to use tax is the selling price, or the fair market value of the property, whichever is lower, calculated at the time of first use within the state.

Credit for tax paid to another state

Sales or use tax paid to another state may be used as a credit to reduce the amount of New York State and local use tax due. However, the credit is allowed only to the extent that the other state provides a reciprocal credit for sales and use tax paid to New York and its localities, and no refund of the tax paid to the other state is available to the purchaser. For more information, see Tax Bulletin *Reciprocal Credit for Sales or Use Taxes Paid to Other Taxing Jurisdictions* (TB-ST-765).

Note: The states of New Jersey, Connecticut and Pennsylvania do **not** allow reciprocal credit for sales tax.

Federal excise taxes, custom duties and taxes, and fees paid in foreign countries are not allowed as a credit against any New York State and local sales and use tax.

> Example: *A New York auto dealer purchases diagnostic equipment from a seller in another state, who does not collect New York State sales tax. The dealer owes use tax on the cost of the diagnostic equipment. Any sales tax paid by the dealer to the other state may be used as a credit to reduce the amount of tax due, but only if the other state provides a reciprocal credit for sales tax paid in New York, and no refund of the tax paid to the other state is available to the purchaser.*

Part VII – Parking, garaging, or storing

Sales of parking, garaging, or storing of motor vehicles

The sale of providing parking, garaging, or storing of motor vehicles by dealers operating a parking garage (other than a garage that is part of premises occupied solely as a private one-or-two family dwelling), parking lot, or other place of business providing parking, garaging, or storing of motor vehicles is generally subject to sales tax.

Rates of sales tax

Sales tax on providing parking, garaging, and storing of vehicles is imposed at the combined state and local rate in effect in the taxing jurisdiction where the service is provided. See below for additional rates and special rules.

Special sales tax requirements in Manhattan

Providing parking, garaging, or storing of vehicles in New York City is subject to a higher rate of sales tax than other sales. In addition, there are special sales tax requirements (such as filing Schedule N-ATT) for providing parking, garaging, or storing of vehicles at facilities located in Manhattan. For more information, see Tax Bulletin *Sales Tax Rates, Additional Sales Taxes, and Fees* (TB-ST-825).

Purchases of parking, garaging, or storage services

Generally, the purchase of parking, garaging, or storage services for motor vehicles (for example, the storage of vehicles held in inventory) is subject to tax. However, if a dealer enters into a lease or rental agreement of real property, the charges are not subject to tax. For determining if an agreement is a nontaxable lease of real property, see TSB-M-08(14)S, *Sales Tax Treatment of a Lease or Rental of Real Property for the Purpose of Parking, Garaging or Storage of Motor Vehicles*.

Part VIII – Rate of sales tax

Rate of sales tax for sales of motor vehicles

Sales tax is due on the sale of a motor vehicle to a purchaser who is a resident of New York State (see Appendix-A). For information on use tax see page 18.

A dealer computes the amount of sales tax due on the sale by multiplying the combined state and local sales tax rate by the taxable amount of the sale. Generally, sales tax is collected at the combined rate in effect in the local jurisdiction where the customer is a resident, regardless of where the vehicle is delivered to the customer. The combined state and local sales tax rate consists of the state sales tax rate, plus the applicable rate of sales tax imposed by the local jurisdiction (city or county). There is also an additional sales tax rate imposed in those localities within the Metropolitan Commuter Transportation District (MCTD). The MCTD is composed of New York City (Bronx, Kings, New York, Queens and Richmond counties), and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties.

If an individual is a resident of New York State, and has one or more residences outside of New York State, sales tax is collected at the rate in effect in the jurisdiction where the individual is a New York State resident.

If an individual is a resident of more than one local taxing jurisdiction within New York State (whether or not the individual has one or more residences outside of New York State), but is not a resident of the locality where delivery occurs, sales tax is collected at the rate in effect in the New York State jurisdiction where the vehicle is principally used or garaged.

To determine the correct local sales tax jurisdiction for a particular address in New York State, including the combined state and local sales tax rate for that jurisdiction, visit the Tax Department's Web site and click on *Sales Tax Jurisdiction and Rate Lookup*. For rate information only, see Publication 718, *New York State Sales and Use Tax Rates by Jurisdiction.* For more information on sales tax rates, see Tax Bulletin *Sales Tax Rates, Additional Sales Taxes, and Fees* (TB-ST-825).

Caution: Do not use ZIP codes to determine the sales tax rate. Postal zones usually do not coincide with sales tax jurisdictions, and using ZIP codes, including the ZIP code on a driver license, often results in incorrect tax reporting.

Rate of sales tax for sales of all other tangible personal property and services

In general, sales of all other tangible personal property and taxable services are taxed using the rate in effect in the jurisdiction where the property is delivered by the seller to the purchaser (or the purchaser's designee), or in the jurisdiction where the services are performed. This rule applies to a dealer's sales of parts and repair services. However, towing services are taxed using the rate in effect in the jurisdiction where the purchaser directs the vehicle to be delivered.

Part IX – Dealer purchases and exempt sales

General

Certain purchases and sales by dealers are exempt from sales tax. Most exempt purchases, as well as most exempt sales, require an exemption document. For a complete list of exempt purchases and sales and any required exemption document, see Tax Bulletin *Exemption Certificates for Sales Tax* (TB-ST-240).

Dealer purchases

Dealer's use of resale certificates

Dealers may purchase certain property or services exempt from sales tax. The property and services must be exclusively for resale. To make such purchases tax exempt, the dealer must give the seller a properly completed Form ST-120. The dealer must provide the certificate to the seller no more than 90 days after the delivery of the property or the performance of the

service. The certificate may be used as a *single-use certificate* or as a *blanket certificate*. The blanket certificate allows the dealer to make subsequent eligible purchases exempt from tax.

Purchases of tangible personal property for resale

Examples of tangible personal property for resale that a dealer may purchase tax-exempt are:

- motor vehicles held for sale;
- motor vehicle parts, tires, and other accessories;
- motor oils and lubricants;
- adhesives; and
- paints, primers, and waxes.

A dealer who leases vehicles to customers is also entitled to use Form ST-120 to purchase for resale parts or other property that will become a physical component part of the leased vehicle.

However, when a dealer purchases tangible personal property or services for its own use, or the items are consumed by the dealer and are not actually transferred to the customer, these purchases are not for resale. The dealer must pay state and local sales or use tax on the items or services purchased. Examples of these items are:

- equipment;
- tools;
- shop rags and hand cleaners;
- paint sprayers and masking tape;
- waste removal services to remove items such as old tires or waste oil;
- tools and supplies used by a dealer in the showroom, business office, shop, or on the lot; and
- a vehicle taken out of inventory and used by a dealer or its staff (see page 20).

These items are subject to tax whether or not the property or services are ultimately itemized on any invoice or other statement of price given to the dealer's customer. The fact that a dealer chooses to itemize or charges a separate fee for its expenses (property or services used by the dealer in

making the sale) does not enable the dealer to make these purchases exempt from sales tax.

> Example: *A dealer purchases shop equipment, hand tools, and supplies such as specialty gases, abrasives, shop-cloths, and hand cleaners for its repair and auto body shops. The dealer also purchases the services of a waste disposal contractor to remove old tires, used motor oil, and other materials. The dealer must pay sales tax on all these purchases (even if the dealer separately itemizes or charges a separate fee for these items on the customer's invoice). Since the items are consumed by the dealer in its operations, they cannot be purchased for resale.*

For more information, see Tax Bulletin *Auto Repair and Body Shops* (TB-ST-40).

Purchases of services for resale

A dealer may purchase certain taxable services exempt from sales tax by providing the seller with a properly completed Form ST-120, as explained on page 24. For example, when a dealer is servicing an automobile and subcontracts part or all of the service to a specialty shop (such as a body shop, automobile glass shop, detailing shop, or machine shop), the subcontracted services may be purchased for resale.

However, certain taxable tangible personal property or services used by a dealer cannot be purchased for resale and are subject to sales tax. Examples include repairs, maintenance, or cleaning of a dealership's real property, vehicles that are not in inventory (for example parts trucks), or machinery or equipment.

For sales tax information about car wash services, including purchasing the services for resale, see Tax Bulletin *Car Wash Services* (TB-ST-105).

Services to items in inventory

Installing parts, or servicing, maintaining, or repairing a vehicle that is being held in inventory for sale is not subject to tax. Dealers may purchase washing, waxing, vacuuming, and detailing services exempt from tax, using a properly completed Form ST-120, provided the dealer is holding the vehicle for sale or lease, or is repairing it.

Rental of vehicles for use as loaner cars

If a dealer rents or leases vehicles to be used as loaner cars for its customers, the rental or lease of such a vehicle is a purchase for resale only if the customer is contractually entitled to a loaner car. This obligation can be through the manufacturer, through an extended service contract or by other contractual agreements. A dealer policy to provide a loaner car to its customers is not sufficient, and such vehicles are not eligible for the resale exemption. Also, see *Loaners* on page 19.

Enhanced emissions inspection equipment

Certain purchases of enhanced emissions inspection equipment for conducting emission inspection and maintenance programs as required by

the Federal Clean Air Act of 1990, and the New York State Clean Air Compliance Act, are exempt from sales tax. In order to qualify, a dealer must be an official inspection station licensed by DMV, and must use equipment that has been certified by the Department of Environmental Conservation. To claim the exemption, the dealer must give the seller of the equipment a properly completed Form ST-121, *Exempt Use Certificate*.

Note: This exemption does not apply to equipment used to perform emissions inspections on diesel engine-powered vehicles with a gross vehicle weight rating exceeding 8,500 pounds.

Promotional materials – flyers and coupons

Certain printed promotional materials, including coupons that are mailed to prospective customers free of charge, may be purchased exempt from sales tax by the dealer. The exemption includes the purchase and storage of the exempt promotional materials. To claim the exemption, the dealer must provide the seller with a properly completed Form ST-121.2, *Exemption Certificate for Purchases of Promotional Materials.* This exemption applies only to promotional materials delivered by the U. S. Postal Service or a similar delivery service.

Exempt sales

Dealers may sell certain property or services exempt from sales and use tax. Several examples of the types of exempt sales typical for dealers are listed below, including the appropriate exemption certificate, if any.

In addition, sales to certain organizations are exempt from sales tax. For more information, see *Sales to exempt organizations* on page 30.

Accepting exemption certificates

If a dealer accepts a properly completed exemption certificate from its customer in good faith (that is, the dealer has no knowledge that the certificate is false or fraudulently issued), no later than 90 days from the date of the sale, the dealer is relieved of any liability for failure to collect the sales tax for that sale. As a result, the burden of proving that the sale is exempt rests solely with the customer. The dealer may not accept a certificate in good faith if the dealer has actual knowledge that the document is false or fraudulent. The customer must present the certificate to the dealer, who must retain it for at least three years after the due date of the sales tax return to which it relates, or the date the return was filed, whichever is later. For more information about exemption certificates, see Tax Bulletin *Exemption Certificates for Sales Tax* (TB-ST-240).

Sales to nonresidents

If a purchaser of a motor vehicle is a nonresident of New York State, sales tax is generally not imposed nor required to be collected. However, if the vehicle is registered in New York State, sales tax must be collected at the rate in effect in the jurisdiction where the vehicle is delivered.

Nonresident purchasers may purchase a motor vehicle exempt from sales tax by providing to the dealer a properly completed Form DTF-820,

Certificate of Nonresidency of New York State and/or Local Taxing Jurisdiction. Purchasers must certify that they:

- are not residents of New York State;
- do not have a place of abode in this state;
- are not carrying on any employment, trade, business, or profession in this state in which the motor vehicle will be used; and
- are not registering the motor vehicle in New York State (including any temporary registration).

If the transaction fails to meet any of these conditions, the purchase is subject to sales tax.

In addition to receiving Form DTF-820, the dealer must indicate on DMV Form MV-50 that the sale was made without collecting New York State sales tax.

The sale of a motor vehicle to a customer who has a home in New York and a home in another state (a *dual resident*) is subject to New York sales tax. This tax is due at the rate in effect in the jurisdiction where the purchaser's New York State residence is located. If the purchaser has more than one residence in New York State, but is not a resident of the locality where delivery occurs, the rate used is where the vehicle will be principally garaged.

An *in-transit permit* for transporting a motor vehicle out of New York State for registration outside the state does not cause the transaction to be subject to tax. However, if a dealer issues a *temporary certificate of registration* or a *temporary registration* (for transport or for any other purpose) to a customer who is a nonresident, the dealer must collect New York sales tax.

Accessibility equipment for persons with disabilities

Sales of accessibility equipment for persons with disabilities (prosthetic aids) are exempt from tax. This exemption includes charges for the services of installing, maintaining, servicing, or repairing these items. Special lifts and hand controls installed on or in a vehicle to enable persons with disabilities to access or operate a motor vehicle are examples of prosthetic aids that a dealer may sell, install, or service exempt from sales tax. A dealer does not need to obtain an exemption document from the customer for the sale of, or service to, such property, but must retain documentation describing the sale.

When selling a motor vehicle with the equipment already installed, only the incremental cost of the vehicle is exempt from sales tax. The incremental cost is the amount of the sales price of a vehicle that exceeds the sales price of a comparable motor vehicle without the prosthetic aids installed. The

amount must be reasonable and separately stated in the written contract or bill given to the customer. The cost of the vehicle remains taxable. If the vehicle and the prosthetic aids are sold for a single price, the entire amount is subject to sales tax.

Farming and qualifying commercial horse boarding

The sale of a motor vehicle and other tangible personal property that is used predominantly (more than 50 percent) in farming, or in a qualifying commercial horse boarding operation, or both, is exempt from sales tax. Also exempt are installing, repairing, maintaining, or servicing tangible personal property used predominantly either in farming or in a commercial horse boarding operation, or both.

To make these purchases exempt from sales tax, customers must give the dealer a properly completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*.

Family members

Sales of motor vehicles by dealers to family members (spouses, children or stepchildren, or parents or stepparents), **are subject to sales tax**. Sales between family members who are not dealers are exempt.

Film production

A motor vehicle used directly and predominantly in the production of a film for sale may be purchased, leased, or rented exempt from sales tax (for example, a prop vehicle featured in a commercial or film).

To claim this exemption, the customer must provide the dealer with a properly completed Form ST-121.

Tractors, trailers, and semi-trailers

The sale or lease of a qualifying tractor, trailer, or semi-trailer (a vehicle used in combination where the gross vehicle weight of the combination exceeds 26,000 pounds), and any tangible personal property installed on the qualifying vehicle, may be purchased exempt from sales tax. This also includes installation, repair, or maintenance services performed on qualifying vehicles.

To claim this exemption, the purchaser must provide the dealer with a properly completed Form ST-121.1, *Exemption Certificate for Tractors, Trailers, Semi-trailers, or Omnibuses*.

Omnibuses

The sale or lease of a qualifying omnibus (bus) and any parts, equipment, and lubricants (but not fuel) used in operating a qualifying omnibus (see Appendix A for the definition of *qualifying omnibus*), may be purchased exempt from sales tax. The exemption also includes installation, maintenance, or repair services performed on the omnibus, or performed on parts, equipment, or lubricants used in the operation of the omnibus.

To claim this exemption, the purchaser must give the dealer a properly completed Form ST-121.1.

Services delivered outside the state

Charges for the services of installing, maintaining, servicing, and repairing motor vehicles and other tangible personal property are exempt from sales tax when the property upon which the service is performed is delivered to the purchaser outside New York State. Although no exemption certificate is required, the dealer must maintain records to document that the property was delivered outside the state.

Sales of parts for resale

Dealers often sell vehicle parts and accessories to purchasers who intend to use those items to perform a taxable service or repair (for example, sales to other dealers or repair facilities). Such items are considered purchased for resale. To obtain an exemption from tax, purchasers must provide the dealer with a properly completed Form ST-120.

Sales of vehicles to scrap or salvage yards

When scrap or salvage yards purchase vehicles from a dealer, the sale is subject to tax unless the scrap or salvage yard intends to resell the vehicle or its parts. To purchase or transfer the vehicle exempt from tax, the scrap or salvage yard must provide the dealer with a properly completed Form ST-120.

Part X – Sales to exempt organizations

General

Sales of tangible personal property, including motor vehicles and parts, and sales of services to certain governments, individuals, and organizations (exempt customers), are not subject to sales tax. A brief discussion of these sales follows.

Exempt customers include:

- the United States and its agencies and instrumentalities;
- New York State, and any of its agencies and instrumentalities, public corporations or political subdivisions (including local governments);
- exempt organizations such as religious, charitable, scientific, and educational institutions that have qualified for exempt status under New York State sales tax law;
- certain posts or organizations of past or present members of the armed forces of the United States; and
- certain Indian nations, tribes, and individual Indians.

Other states of the United States and their agencies and political subdivisions (for example, the state of Vermont, the city of Boston, a public school in another state) **do not** qualify for sales tax exemption.

In each case, the exempt customer must establish its right to an exemption by giving the dealer Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*, or other proper documentation.

Organizations using Form ST-119.1 must be the direct purchaser of record and the direct payer of record. *Direct purchaser* includes any employee or agent authorized by the organization to make purchases on its behalf.

Direct payer of record means that payment is made by the organization or from its funds directly to the dealer.

Federal, New York State, and local government agencies

Eligible governmental agencies must establish their right to exemption by giving the dealer a governmental purchase order, or other appropriate document that identifies the customer as a governmental agency. For more information, see Tax Bulletin *Purchases and Sales by Governmental Entities* (TB-ST-700).

Certain Indian nations, tribes, and individuals

An exempt Indian nation or tribe may make purchases exempt from sales tax, including purchases of motor vehicles, and services or repairs to vehicles. To make purchases exempt from sales tax, the nation or tribe must provide vendors with a properly completed Form ST-119.1.

The sale of a motor vehicle to an individual member of an exempt Indian nation or tribe is exempt from sales tax only if the individual is an enrolled member of the nation or tribe, resides on a qualified reservation, and the vehicle will be registered to an address on a qualified reservation. The purchaser should give the dealer a properly completed Form DTF-801, *Certificate of Indian Exemption for Certain Property or Services Delivered on a Reservation.*

Services or repairs to vehicles performed on or delivered to the qualified reservation

To qualify for the exemption, services or repairs to vehicles must be made on or delivered to the qualified reservation.

Diplomatic missions and personnel

The Office of Foreign Missions (OFM) administers the exemption of eligible foreign missions and their members from payment of any taxes when purchasing or leasing a vehicle. For information about OFM's vehicle tax exemption program, contact the U.S. Department of State, Office of Foreign Missions, at *www.state.gov/ofm/tax/vehicle/*.

Sales of parts, accessories, or repair services made to diplomatic missions or to diplomatic personnel may be exempt from sales tax. The United States Department of State grants tax exemption to eligible foreign officials on assignment in the United States. The purchaser must be the holder of a valid sales tax exemption card issued by the U.S. Department of State or by the American Institute in Taiwan. Both mission and individual exemption cards contain animal images to indicate both the level of exemption and

any restrictions, which are explained on both the diplomatic exemption card and on Form DTF-950, described below. Exemption cards issued to qualified persons bear a photograph of the individual to whom it is issued.

For purchases other than vehicles, in addition to holding a valid sales tax exemption card, the purchaser must:

- Present the dealer with Form DTF-950, *Certificate of Sales Tax Exemption for Diplomatic Missions and Personnel*: *Single Purchase Certificate*.
- Show the dealer the tax exemption card or other exemption evidence so the dealer can record the pertinent identifying information.
- Sign the invoice at the time of purchase in the presence of the dealer.

For information about accepting exemption certificates, see page 27.

Part XI – Lemon law

New car lemon law

Under the new car lemon law, when a new motor vehicle does not conform to the manufacturer's warranties, the manufacturer, at the option of the purchaser, must refund to the purchaser the full lease price or purchase price of the vehicle.

The purchaser may then submit a claim for refund from the Tax Department for all or a portion of the sales tax paid on the lease or purchase price of the vehicle. This includes the sales tax paid on the purchase price or capitalized cost, including any lease payments, fees, and charges or any portion thereof that were subject to tax and were refunded to the purchaser by a manufacturer under the new car lemon law. Neither the dealer nor the vehicle manufacturer is entitled to a refund or credit of any of the sales and use tax paid by the purchaser.

Used car lemon law

Under the used car lemon law, if the dealer of a used motor vehicle (after a reasonable period of time) fails to correct a malfunction or defect as required by the warranty, the dealer must accept the return of the vehicle from the purchaser. Upon acceptance, the dealer must refund to the purchaser the full purchase price, or for lease contracts, all payments made under the contract, including sales tax, minus a reasonable allowance for any damage not attributable to normal wear or usage. For lease contracts, all further contract payments due from the purchaser are canceled.

When a dealer accepts the return of a used vehicle, the dealer is entitled to a refund or credit from the Tax Department for any of the sales or use taxes refunded by the dealer to the purchaser for the return of the vehicle. Otherwise, the purchaser must submit an application for a refund of the sales tax paid directly to the Tax Department.

To claim a refund or credit, submit Form AU-11, *Application for Credit or Refund of Sales or Use Tax*, within three years of the date the refund is received by the purchaser. See Tax Bulletin *How to Apply for a Refund of Sales and Use Tax* (TB-ST-350).

Appendix A – Definitions

For purposes of this publication:

Motor vehicle

Motor vehicle generally means a vehicle as defined in section 125 of the Vehicle and Traffic Law, and includes any motorized vehicle operated or driven on a public highway. Cars, light trucks, vans, motorcycles, and motorbikes are all examples of motor vehicles. The following vehicles are not considered motor vehicles:

- electrically-driven personal mobility assistance devices operated or driven by a person with a disability;
- snowmobiles;
- all terrain vehicles (ATVs);
- fire and police vehicles (other than ambulances);
- farm tractors and other farm equipment used exclusively for agricultural purposes or for snow plowing other than for hire;
- self-propelled caterpillar or crawler-type equipment while operated on a construction site; and
- any vehicle with a gross vehicle weight of more than 10,000 pounds.

Resident

For sales and use tax purposes, an individual is a resident of the state and of any locality in which he or she maintains a permanent place of abode. A *permanent place of abode* is a dwelling place maintained by a person, or by another for that person to use, whether or not owned by such person. This includes a person maintaining a permanent place of abode in New York who does **not** spend more than 183 days a year in the state (e.g., a college student or a member of the military may all be residents for sales and use tax purposes).

The dwelling may be a home; an apartment or flat; a room (including a room at a hotel, motel, boarding house, or club); a room at a residence hall operated by an educational, charitable, or other institution; housing provided by the armed forces of the United States, whether the housing is located on or off a military base or reservation; a trailer; a mobile home; a houseboat; or any other premises. This includes second homes, including vacation homes. Therefore, for sales tax purposes, you can be a resident of more than one locality, more than one state, or both.

An individual is also a resident of any local jurisdiction in which the individual carries out any employment, trade, business, or profession with respect to any property used in that trade, business, or profession.

A corporation incorporated under the laws of New York is a resident of New York State. In addition, a corporation, association, partnership (including an LLP), LLC, or other entity doing business in New York State or maintaining a place of business in New York State is a resident of New York State, and of any locality in which it is doing business or maintaining a place of business.

For sales tax information on sales to nonresidents, see page 27.

Qualifying omnibus

Qualifying omnibus is a motor vehicle weighing at least 26,000 pounds and measuring at least 40 feet in length, used to transport persons for hire by an omnibus carrier operating with a certificate or permit issued by the New York State Department of Transportation, or by an appropriate agency of the United States.

Appendix B – Record keeping and returns

Record keeping, filing returns, and the payment of sales tax

As a sales tax vendor, a dealer is required to not only collect the correct amount of tax from its customers, but is also required to keep accurate records of sales, report the sales to the Tax Department by filing sales and use tax returns on time, and remit any sales or use tax collected or owed. Records may be kept on paper or electronically. See Tax Bulletin *Recordkeeping Requirements for Sales Tax Vendors* (TB-ST-770).

Dealers must report any sales made and remit the applicable sales tax based on the accrual method of accounting. That is, when you make a sale for which payment is not received at the time the product or service is delivered, you must still report the sale and remit the sales tax due, using the tax return covering the period in which the sale is made. *Sales Tax Web File* is the easiest and fastest way to file sales and use tax returns and make payments, and most registered sales tax vendors are required to use it. To get started, visit our Web site and create an Online Services business account. Also, see Tax Bulletin *Filing Requirements for Sales and Use Tax Returns* (TB-ST-275).

The dealer must also document exempt sales, retaining the exemption document or other evidence of exemption, and associating it with each exempt sale. If a dealer fails to keep adequate records, and the dealer is audited by the Tax Department, the dealer could be held liable for substantial additional sales and use taxes, plus penalties and interest. For more information, see Publication 900, *Important Information for Business Owners*.

A dealer must also track its use tax obligations, including use tax due on its purchases, or on items removed from inventory and used by the dealer or its employees (for use tax information, see page 18). Also, see Tax Bulletin *Use Tax for Businesses* (TB-ST-910).

Appendix C – Sale, transfer, or assignment of business assets

Purchasing or acquiring a business or its assets: Caution

If you are acquiring business assets of an existing business, you may be held liable for any sales taxes the seller or transferor owes to the Tax Department.

At least ten days before you plan to pay for the business or any assets of the business, or take possession of the business assets (whichever comes first), complete and send to the Tax Department Form AU-196.10, *Notification of Sale, Transfer, or Assignment in Bulk*. Generally, the Tax Department is obligated to respond within five business days of the receipt of the form. The date of receipt of Form AU-196.10 by the Tax Department is the date it is actually delivered to the Audit Division's Bulk Sales Unit. For more rules which you and the seller must follow in any such sale, see Publication 750, *A Guide To Sales Tax in New York State*.

Caution: If you fail to comply with these procedures, **you could be held liable** for the amount of the seller's unpaid sales taxes, up to the selling price or the fair market value of the assets you purchased or acquired, whichever is greater.

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(12/12)

Need help?

Visit our Web site at ***www.tax.ny.gov***

- get information and manage your taxes online
- check for new online services and features

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.

Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

Statue Cruises Comments on Proposed Department of Consumer Affairs (DCA) Rules Regarding Unlawful Sales Tax
January 21, 2020

Statue Cruises is the only authorized provider of ferry service to the Statue of Liberty and Ellis Island serving over four million visitors each year. In addition to our concession contract with the National Park Service, Statue Cruises also has a license agreement with the New York City Department of Parks & Recreation to operate out of Battery Park.

An ongoing problem that is greatly impacting the quality of life of visitors to Battery Park, and sometimes making the visitor experience unsafe, is the illegal ticket sellers who operate in violation of the law. The current law prohibits vendors from selling or offering for sale goods, services and entertainment in any City park without a permit. Not only do these vendors violate the law by selling and soliciting in The Battery, their deceptive trade practices also violate the consumer protection law.

We daily receive feedback from our customers that they were harassed by a ticket seller in Battery Park while trying to visit our service. Statue Cruises does not employ street ticket sellers but these vendors misrepresent that their offerings bring visitors to Liberty and Ellis Islands, which creates confusion for the consumer.

With respect to the proposed Rule, Statue Cruises has found that the ticket sellers in Battery Park are also regularly misrepresenting that sales tax is to be collected for sightseeing ferry tickets. To be clear, City and State tax is not collected on transportation services. We have provided an example attached to our comments for DCA's review.

Statue Cruises understands that this proposed Rule will help clarify that it is unlawful to both collect sales tax and represent that sales tax is to be collected. We also understand that this Rule will help DCA enforce the intent of the law—to protect consumers—to the fullest extent.

Statue Cruises has an ongoing working relationship with NYPD, Department of Parks & Recreation, DCA, and elected officials who we regularly brief on this matter. We appreciate DCA's continued attention to addressing and enforcing this ongoing violation of the law. Statue Cruises is in favor of the proposed Rule and urges DCA to adopt the Rule.

We thank you for your attention to this important matter.

Gmail

Conor Brennan <conorbrennan78@gmail.com>

Receipt from B.S.L TOURS

2 messages

B.S.L TOURS via Square <receipts@messaging.squareup.com> Wed, Aug 8, 2018 at 12:41 PM
Reply-To: "B.S.L TOURS via Square"
<r_oiyu2mkiijbegnrtga3vsurv.rYUZ.0.11735379577c8d82d665a273721cd567daa089fd@reply.squareup.com>
To: conorbrennan78@gmail.com

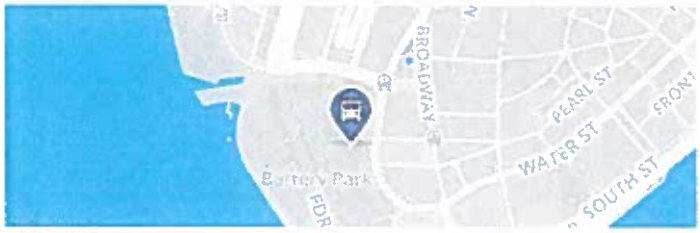
Now when you shop at sellers who use Square, your receipts will be delivered automatically.
Not your receipt?

B.S.L TOURS

How was your experience?

$50.02

Custom Amount	$40.00
Purchase Subtotal	$40.00
Sales Tax And Card Fee (8.75%)	$3.50
Tip	$6.52
Total	**$50.02**



B.S.L TOURS
Last Location
929-322-5695

Discover 5713 (Swipe) Aug 8 2018 at 12:41 PM

#N7IH

CONOR J BRENNAN Auth code: 00886R

Square Just Got More Rewarding
Your favorite businesses may send you news and rewards via Square.
Learn more and update preferences.

1455 Market Street, Suite 600
San Francisco, CA 94103

Square Privacy Policy · Not your receipt?
Manage preferences for digital receipts

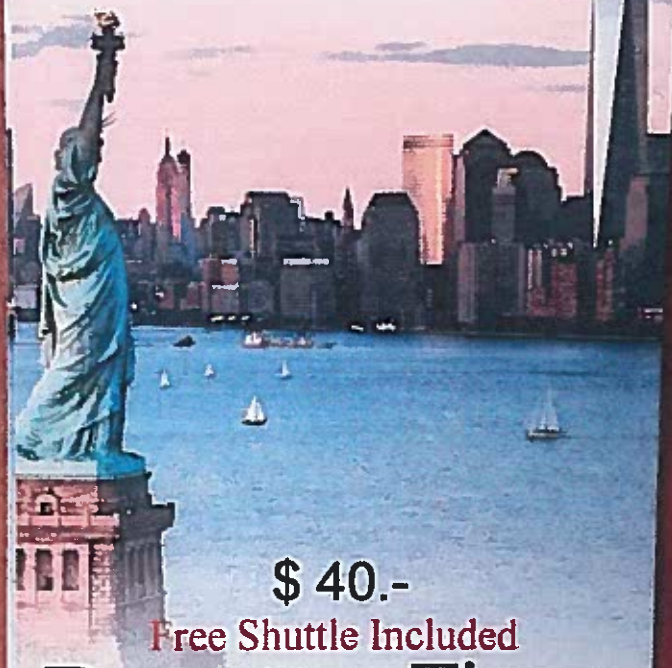
Conor Brennan <conorbrennan78@gmail.com> Wed, Aug 8, 2018 at 2:24 PM
To: cbrennan@statuecruises.com

[Quoted text hidden]

TOURS R US

see NY From The Water

809



$ 40.-

Free Shuttle Included

Departure Times

11:00am / 12:30pm

2:00pm / 3:30pm

Departure times subjected to change

Liberty Park, NJ

3527256189

Comment:
1. The title of the proposed rule at <https://rules.cityofnewyork.us/proposed-rules> should be revised to read, "Proposed Rules Regarding Unlawful Collection of Sales Tax." The current title, "Proposed Rules Regarding Unlawful Sales Tax," is unintentionally ludicrous, since New York state and city sales taxes themselves are definitely not unlawful. 2. The "Statement of Basis and Purpose of Proposed Rule" should be revised to correctly identify the activities intended to be codified as deceptive trade practices. The proposed rule centers on the unlawful collection of sales tax, not the "collection of unlawful sales tax." New York state and city sales taxes are lawful, but certain sales tax collection practices can be definitely unlawful. 3. 6 RCNY § 5-41, as proposed to be amended, will address three deceptive trade practices. Comprehension, summonsing, and enforcement will be likely improved and expedited, and technical legal inquiries and challenges will be likely minimized, if not eliminated, if each deceptive trade practice is distinctly codified-- for example: 6 RCNY § 5-41(a), to address the unlawful collection of sales tax, where Article 28 of the Tax Law does not provide for the collection of sales tax; 6 RCNY § 5-41(b), to address the unlawful representation that sales tax may be collected, where Article 28 of the Tax Law does not provide for such collection of sales tax; and 6 RCNY § 5-41(c), to address the unlawful misrepresentation of the amount of sales tax required to be collected pursuant to Article 28 of the Tax Law. 4. The proposed rule should be expanded to include modifying the catchline of 6 RCNY § 5-41 from the obviously misleading "Unlawful Sales Tax" to "Unlawful Sales Tax Collection Practices," or similar wording.