S T A T E O F N E W Y O R K

9035

I N A S S E M B L Y

January 17, 2012

Introduced by M. of A. REILLY -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to imposing sales tax at the time of the sale of a gift certificate and exempting purchases made with a gift certificate

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph 6 of subdivision (b) of section 1101 of the tax law, as amended by chapter 399 of the laws of 2009, is amended and a new paragraph 39 is added to read as follows:

(6) Tangible personal property. Corporeal personal property of any nature. However, except for purposes of the tax imposed by subdivision (b) of section eleven hundred five of this article, such term shall not include gas, electricity, refrigeration and steam. Such term shall also include pre-written computer software, whether sold as part of a package, as a separate component, or otherwise, and regardless of the medium by means of which such software is conveyed to a purchaser. Such term shall also include newspapers and periodicals where the vendor ships or delivers the entire edition or issue of the newspaper or periodical, with or without the advertising included in the paper edition or issue, but not including anything, other than advertising, not in such paper edition or issue, to the purchaser by means of telephony or telegraphy or other electronic media, but only where the amount of the sale price to such purchaser of such newspaper or magazine or the subscription price, in the case of a subscription to a newspaper or periodical, including any charge by such vendor for shipping or delivery to the purchaser, is separately stated to such purchaser. SUCH TERM SHALL ALSO INCLUDE GIFT CERTIFICATE, ELECTRONIC GIFT CARD OR MAGNETIC GIFT CARD. However, such term shall not include a modular home that is permanently affixed to real property, provided that, if a modular home is to be removed from the realty, whether as a whole or disassembled, it and its component parts shall be tangible personal property whether it is to be sold as a whole or as pieces.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(39) GIFT CERTIFICATE. (I) A "GIFT CERTIFICATE" SHALL MEAN A WRITING IDENTIFIED AS A GIFT CERTIFICATE BY A CONSUMER FOR USE BY A CUSTOMER, WHETHER OR NOT REDEEMABLE FOR CASH, AND USABLE FOR ITS FACE AMOUNT IN LIEU OF CASH FOR THE EXCHANGE OF GOODS OR SERVICES SUPPLIED BY THE SELLER. GIFT CERTIFICATES SHALL INCLUDE ELECTRONIC OR MAGNETIC CARDS WITH A BANKED DOLLAR VALUE, A MERCHANDISE CREDIT, A CERTIFICATE WHERE THE ISSUER HAS RECEIVED PAYMENT FOR THE FULL FACE VALUE FOR THE FUTURE PURCHASE OR DELIVERY OF GOODS OR SERVICES, AND ANY OTHER MEDIUM THAT EVIDENCES THE GIVING OF CONSIDERATION IN EXCHANGE FOR THE RIGHT TO REDEEM IT FOR GOODS OR SERVICES OF AT LEAST AN EQUAL VALUE. PRE-PAID CALLING ARRANGEMENTS, SUCH AS PRE-PAID PHONE CARDS, ARE NOT CONSIDERED GIFT CERTIFICATES.

(II) "ELECTRONIC GIFT CARD" OR "MAGNETIC GIFT CARD" SHALL MEAN A CARD WITH A BANKED DOLLAR VALUE THAT MAY BE REDEEMED FOR GOODS OR SERVICES WHEREBY THE DOLLAR AMOUNT OF THE CARD IS REDUCED ACCORDINGLY.

S 2. Section 1115 of the tax law is amended by adding a new subdivision (hh) to read as follows:

(HH) (1) PURCHASES MADE WITH A GIFT CERTIFICATE, ELECTRONIC GIFT CARD OR MAGNETIC GIFT CARD.

(2)(A) A "GIFT CERTIFICATE" SHALL MEAN A WRITING IDENTIFIED AS A GIFT CERTIFICATE BY A CONSUMER FOR USE BY A CUSTOMER, WHETHER OR NOT REDEEMABLE FOR CASH, AND USABLE FOR ITS FACE AMOUNT IN LIEU OF CASH FOR THE EXCHANGE OF GOODS OR SERVICE SUPPLIED BY THE SELLER. GIFT CERTIFICATES SHALL INCLUDE ELECTRONIC OR MAGNETIC CARDS WITH A BANKED DOLLAR VALUE, A MERCHANDISE CREDIT, A CERTIFICATE WHERE THE ISSUER HAS RECEIVED PAYMENT FOR THE FULL FACE VALUE FOR THE FUTURE PURCHASE OR DELIVERY OF GOODS OR SERVICES, AND ANY OTHER MEDIUM THAT EVIDENCES THE GIVING OF CONSIDERATION IN EXCHANGE FOR THE RIGHT TO REDEEM IT FOR GOODS OR SERVICES OF AT LEAST AN EQUAL VALUE. FOR PURPOSES OF THIS SUBDIVISION, PRE-PAID CALLING ARRANGEMENTS, SUCH AS PRE-PAID PHONE CARDS, ARE NOT CONSIDERED GIFT CERTIFICATES.

(B) "ELECTRONIC GIFT CARD" OR "MAGNETIC GIFT CARD" SHALL MEAN A CARD WITH A BANKED DOLLAR VALUE THAT MAY BE REDEEMED FOR GOODS OR SERVICES WHEREBY THE DOLLAR AMOUNT OF THE CARD IS REDUCED ACCORDINGLY.

S 3. This act shall take effect on the first day of a quarterly sales tax period, as set forth in subdivision (b) of section 1136 of the tax law, next succeeding the thirtieth day after it shall have become a law. Provided, however that the commissioner of taxation and finance shall take any action necessary for the timely implementation of this act on or before the date on which it shall have become a law.