

5637

2011-2012 Regular Sessions

I N S E N A T E

June 8, 2011

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and
when printed to be committed to the Committee on Investigations and
Government Operations

AN ACT to amend the tax law, in relation to exempting electronic news
services and electronic periodicals from sales and compensating use
taxes

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

1 Section 1. Subdivision (b) of section 1101 of the tax law is amended
2 by adding a new paragraph 37 to read as follows:
3 (37) ELECTRONIC NEWS SERVICE. (I) A SERVICE DELIVERED, FURNISHED OR
4 PROVIDED TO OR ACCESSED BY THE PURCHASER ELECTRONICALLY OR DIGITALLY
5 THAT MEETS ALL OF THE FOLLOWING CONDITIONS:
6 (A) THE SERVICE'S PREDOMINANT PURPOSE IS THE PRESENTATION OF NEWS
7 CONTENT, WHICH IT PROMINENTLY FEATURES;
8 (B) THE SERVICE'S NEWS CONTENT (I) INCLUDES GENERAL NEWS THAT IS
9 ACCESSIBLE WITHOUT USE OF A SEARCH FUNCTION; (II) IS NEWLY PUBLISHED OR
10 UPDATED AT LEAST DAILY UNLESS THE SERVICE SPECIFIES SOME OTHER INTERVAL,
11 PROVIDED, HOWEVER, THAT THE NEWS CONTENT MUST BE NEWLY UPDATED OR
12 PUBLISHED WITHIN A TWENTY-FOUR HOUR PERIOD THAT PRECEDES OR IMMEDIATELY
13 FOLLOWS A TIME WHEN THE NON-NEWS CONTENT IS NEWLY PUBLISHED OR UPDATED;
14 AND (III) IS PREDOMINANTLY PURCHASED FROM CONTRACTED WIRE SERVICES OR
15 WRITTEN OR PRODUCED BY THE EMPLOYEES OR ENGAGED INDEPENDENT CONTRACTORS
16 OF THE PERSON PROVIDING THE SERVICE, INCLUDING, BUT NOT LIMITED TO,
17 EMPLOYEES OR ENGAGED INDEPENDENT CONTRACTORS OF ANY AFFILIATE OF SUCH
18 PERSON;
19 (C) THE SERVICE IS AVAILABLE TO THE PUBLIC;
20 (D) THE SERVICE HOLDS ITSELF OUT AS A "NEWS SERVICE," "NEWSPAPER,"
21 "MAGAZINE," "PERIODICAL," "JOURNAL," "POST," OR WORDS OF SIMILAR IMPORT
22 AND DOES NOT HOLD ITSELF OUT AS SOMETHING OTHER THAN ONE OF SUCH TERMS
23 OR A TERM OF SIMILAR IMPORT.

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

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1 (E) THE SERVICE HAS CONTINUITY AS TO ITS TITLE AND THE GENERAL NATURE
2 OF ITS CONTENT OVER TIME;

3 (F) THE SERVICE IS NOT, IN WHOLE OR IN SUBSTANTIAL PART, A LISTING,
4 CATALOG, DATABASE, OR COMPILATION;

5 (G) THE ONLY SEARCH FUNCTION THE SERVICE OFFERS WITHOUT A SEPARATELY-
6 STATED, REASONABLE CHARGE IS A SEARCH OF THE SERVICE'S OR OF ANY OF ITS
7 AFFILIATES' PRESENT OR PAST NEWS CONTENT. PROVIDED, A SERVICE THAT
8 SATISFIES ALL THE CLAUSES OF THIS SUBPARAGRAPH EXCEPT THIS CLAUSE MAY
9 STILL QUALIFY AS AN ELECTRONIC NEWS SERVICE FOR PURPOSES OF THIS PARA-
10 GRAPH IF THE PROVIDER OF THE SERVICE CAN SHOW THAT THE NON-NEWS CONTENT
11 AVAILABLE THROUGH THE SEARCH FUNCTION IS MERELY AN INCIDENTAL PART OF
12 THE SERVICE, INCLUDING, FOR EXAMPLE, BY SHOWING THAT THE COST TO THE
13 PERSON PROVIDING THE SERVICE OF ANY NON-NEWS CONTENT AVAILABLE THROUGH
14 THE SEARCH FUNCTION IS LESS THAN THE COST TO THAT PERSON OF PROVIDING
15 THE NEWS CONTENT AVAILABLE THROUGH THE SERVICE. PROVIDED, FURTHER, THAT
16 A PURCHASER'S ACCESS TO THE SERVICE'S SEARCH FUNCTION FOR WHICH THERE IS
17 A SEPARATELY-STATED, REASONABLE CHARGE TO THE PURCHASER SHALL BE TREATED
18 SEPARATELY AND IS NOT RELEVANT AS TO WHETHER THIS CLAUSE IS SATISFIED.

19 (II) THE FOLLOWING DEFINITIONS APPLY TO SUBPARAGRAPH (I) OF THIS PARA-
20 GRAPH AND SUBDIVISION (GG) OF SECTION ELEVEN HUNDRED FIFTEEN OF THIS
21 ARTICLE:

22 (A) "NEWS CONTENT" MEANS THE ARTICLES, PHOTOGRAPHS, AND VIDEO AND
23 AUDIO MATERIAL CONCERNING GENERAL NEWS OR SPECIALIZED NEWS AND DOES NOT
24 INCLUDE LISTINGS, ADVERTISEMENTS, CATALOGS, COMPILATIONS, DATABASES, OR
25 THE LIKE.

26 (B) "NON-NEWS CONTENT" MEANS ANY INFORMATION OTHER THAN NEWS CONTENT.

27 (C) "ARTICLE" MEANS A PROSE COMPOSITION, INCLUDING COMMENTARIES,
28 REVIEWS, EDITORIALS, OP-EDS, LETTERS TO THE EDITOR, AND READER COMMENTS
29 ON ARTICLES. THE TERM DOES NOT INCLUDE LISTINGS, ADVERTISEMENTS, CATA-
30 LOGS, COMPILATIONS, DATABASES, OR THE LIKE.

31 (D) "GENERAL NEWS" MEANS MATTERS OF GENERAL INTEREST AND REPORTS OF
32 CURRENT EVENTS.

33 (E) "SPECIALIZED NEWS" MEANS MATTERS OF A SPECIALIZED INTEREST, SUCH
34 AS LEGAL, MERCANTILE, FINANCIAL, THEATRICAL, ENTERTAINMENT NEWS, POLI-
35 TICAL, RELIGIOUS, OR SPORTING MATTERS.

36 (F) "CAP AMOUNT" MEANS THREE HUNDRED PERCENT OF THE ANNUALIZED AVERAGE
37 DAILY NEWSSTAND PRICE OF THE THREE NEWSPAPERS WITH THE LARGEST TOTAL
38 PAID NATIONAL DAILY CIRCULATION. THE COMMISSIONER SHALL DETERMINE THE
39 CAP AMOUNT ANNUALLY AND SHALL CAUSE IT TO BE PUBLISHED ON THE DEPART-
40 MENT'S WEBSITE AND GIVE OTHER APPROPRIATE GENERAL NOTICE THEREOF. THE
41 COMMISSIONER SHALL DETERMINE AND PUBLISH THE CAP AMOUNT ANNUALLY BY
42 APRIL FIRST BASED ON PRICES CHARGED DURING THE FIRST WEEK OF JANUARY OF
43 THAT YEAR, WHICH CAP AMOUNT SHALL APPLY FOR THE SUCCEEDING TWELVE-MONTH
44 PERIOD COMMENCING JUNE FIRST AND ENDING MAY THIRTY-FIRST. THE CALCU-
45 LATION AND PUBLICATION OF THE CAP AMOUNT UNDER THIS CLAUSE SHALL NOT BE
46 INCLUDED WITHIN PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION ONE HUNDRED
47 TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT RELATING TO THE DEFINITION
48 OF A RULE.

49 (G) "AFFILIATE" MEANS, WITH RESPECT TO ANY PERSON, ANY OTHER PERSON
50 THAT, DIRECTLY OR INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES,
51 CONTROLS, OR IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH, SUCH
52 PERSON, AND THE TERM "CONTROL" (INCLUDING THE TERMS "CONTROLLED BY" AND
53 "UNDER COMMON CONTROL WITH") MEANS THE POSSESSION, DIRECTLY OR INDIRECT-
54 LY, OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND
55 POLICIES OF SUCH PERSON, WHETHER THROUGH OWNERSHIP OF VOTING SECURITIES,
56 BY CONTRACT OR OTHERWISE.

1 S 2. Subdivision (b) of section 1101 of the tax law is amended by
2 adding a new paragraph 38 to read as follows:

3 (38) ELECTRONIC PERIODICAL. (I) A PUBLICATION DELIVERED, FURNISHED OR
4 PROVIDED TO OR ACCESSED BY THE PURCHASER ELECTRONICALLY OR DIGITALLY
5 THAT MEETS ALL OF THE FOLLOWING CONDITIONS:

6 (A) THE PUBLICATION'S PREDOMINANT PURPOSE IS THE PRESENTATION OF NEWS
7 CONTENT, WHICH IT PROMINENTLY FEATURES;

8 (B) THE PUBLICATION IS PUBLISHED AT STATED INTERVALS, AT LEAST AS
9 FREQUENTLY AS FOUR TIMES A YEAR BUT NO MORE FREQUENTLY THAN WEEKLY, AND
10 IS NOT UPDATED BETWEEN ISSUES. HOWEVER, THE INCIDENTAL PROVISION OF
11 ADDITIONAL NEWS CONTENT BETWEEN ISSUES WILL NOT PREVENT THE REQUIREMENT
12 IN THIS CLAUSE FROM BEING SATISFIED. IN DETERMINING WHETHER THE NEWS
13 CONTENT ADDED BETWEEN ISSUES IS INCIDENTAL, AMONG THE FACTORS THE
14 COMMISSIONER IS TO CONSIDER IS THE AMOUNT OF THE NEWS CONTENT ADDED
15 BETWEEN ISSUES RELATIVE TO THE NEWS CONTENT IN PRECEDING ISSUES AND THE
16 FREQUENCY OF THE PROVISION OF ADDITIONAL NEWS CONTENT BETWEEN ISSUES.
17 PROVIDED THAT THE DISPLAY OF READER COMMENTS OR LETTERS TO THE EDITOR
18 BETWEEN ISSUES DOES NOT AFFECT WHETHER THIS CLAUSE IS SATISFIED.

19 (C) THE PUBLICATION'S NEWS CONTENT IS PURCHASED FROM CONTRACTED WIRE
20 SERVICES OR WRITTEN OR PRODUCED BY MULTIPLE EMPLOYEES OR ENGAGED INDE-
21 PENDENT CONTRACTORS OF THE PERSON PROVIDING THE PUBLICATION, INCLUDING,
22 BUT NOT LIMITED TO, EMPLOYEES OR ENGAGED INDEPENDENT CONTRACTORS OF ANY
23 AFFILIATE OF SUCH PERSON;

24 (D) THE PUBLICATION IS AVAILABLE TO THE PUBLIC;

25 (E) THE PUBLICATION HOLDS ITSELF OUT AS A "MAGAZINE," "PERIODICAL" OR
26 WORDS OF SIMILAR IMPORT AND DOES NOT HOLD ITSELF OUT AS SOMETHING OTHER
27 THAN A "MAGAZINE," "PERIODICAL," OR WORDS OF SIMILAR IMPORT;

28 (F) THE PUBLICATION HAS CONTINUITY AS TO ITS TITLE AND THE GENERAL
29 NATURE OF ITS CONTENT OVER TIME;

30 (G) THE PUBLICATION IS NOT, IN WHOLE OR IN SUBSTANTIAL PART, A LIST-
31 ING, CATALOG, DATABASE, OR COMPILATION; AND

32 (H) THE ONLY SEARCH FUNCTION THE PUBLICATION OFFERS WITHOUT A SEPA-
33 RATELY-STATED, REASONABLE CHARGE IS A SEARCH OF THE PUBLICATION'S OR OF
34 AN AFFILIATE'S PRESENT OR PAST NEWS CONTENT. HOWEVER: (I) THE PUBLICA-
35 TION'S PROVISION OF ACCESS, AT NO ADDITIONAL CHARGE, TO A SEARCH ENGINE
36 THAT, APART FROM THE SERVICE, IS OTHERWISE AVAILABLE TO THE PUBLIC FOR
37 FREE IS NOT RELEVANT AS TO WHETHER THIS CLAUSE IS SATISFIED; AND (II)
38 THE PUBLICATION'S PROVISION OF ACCESS TO A SEARCH FUNCTION FOR WHICH
39 THERE IS A SEPARATELY-STATED, REASONABLE CHARGE TO THE PURCHASER SHALL
40 BE TREATED SEPARATELY AND IS NOT RELEVANT AS TO WHETHER THIS CLAUSE IS
41 SATISFIED.

42 (II) FOR PURPOSES OF SUBPARAGRAPH (I) OF THIS PARAGRAPH AND THE
43 EXEMPTION PROVIDED FOR ELECTRONIC PERIODICALS IN SUBDIVISION (GG) OF
44 SECTION ELEVEN HUNDRED FIFTEEN OF THIS ARTICLE, "ARTICLES" HAS THE SAME
45 MEANING AS IN SUBPARAGRAPH (II) OF PARAGRAPH THIRTY-SEVEN OF SUBDIVISION
46 (B) OF THIS SECTION AND "NEWS CONTENT" MEANS ARTICLES, PHOTOGRAPHS, AND
47 VIDEO AND AUDIO MATERIAL DEVOTED TO LITERATURE, THE SCIENCES, THE ARTS,
48 NEWS, AN INDUSTRY, PROFESSION, SPORT OR OTHER FIELD OF ENDEAVOR, AND
49 DOES NOT INCLUDE LISTINGS, ADVERTISEMENTS, CATALOGS, COMPILATIONS, DATA-
50 BASES, OR THE LIKE.

51 S 3. Paragraph 1 of subdivision (c) of section 1105 of the tax law, as
52 amended by chapter 373 of the laws of 1995, is amended to read as
53 follows:

54 (1) The furnishing of information by printed, mimeographed or multi-
55 graphed matter or by duplicating written or printed matter in any other
56 manner, including the services of collecting, compiling or analyzing

1 information of any kind or nature and furnishing reports thereof to
2 other persons, but excluding the furnishing of information which is
3 personal or individual in nature and which is not or may not be substan-
4 tially incorporated in reports furnished to other persons, and excluding
5 the services of advertising or other agents, or other persons acting in
6 a representative capacity, and information services used by newspapers,
7 ELECTRONIC NEWS SERVICES, radio broadcasters and television broadcasters
8 in the collection and dissemination of news, and excluding meteorologi-
9 cal services.

10 S 4. Paragraph (i) of subdivision (b) of section 1115 of the tax law,
11 as amended by chapter 575 of the laws of 1965, is amended to read as
12 follows:

13 (i) Telephony and telegraphy and telephone and telegraph service used
14 by newspapers, ELECTRONIC NEWS SERVICES, radio broadcasters and tele-
15 vision broadcasters in the collection or dissemination of news shall be
16 exempt from the tax imposed under subdivision (b) of section eleven
17 hundred five OF THIS ARTICLE if the charge for such services is a toll
18 charge or a charge for mileage services, including the associated
19 station terminal equipment.

20 S 5. Section 1115 of the tax law is amended by adding a new subdivi-
21 sion (gg) to read as follows:

22 (GG) (1) RECEIPTS FROM THE SALE OF AN ELECTRONIC NEWS SERVICE AND
23 CONSIDERATION GIVEN OR CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, AN
24 ELECTRONIC NEWS SERVICE SHALL BE EXEMPT FROM THE TAXES IMPOSED BY PARA-
25 GRAPH ONE OR NINE OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE OF
26 THIS ARTICLE AND CLAUSE (C) OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED
27 TEN OF THIS ARTICLE IF THE RECEIPTS FROM THE SALE OF, OR THE CONSIDER-
28 ATION GIVEN FOR, OR FOR THE USE OF, THE ELECTRONIC NEWS SERVICE DOES NOT
29 EXCEED THE CAP AMOUNT AS DEFINED IN SUBPARAGRAPH (II) OF PARAGRAPH THIR-
30 TY-SEVEN OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTI-
31 CLE. IF THE SUBSCRIPTION PERIOD OF THE ELECTRONIC NEWS SERVICE IS OTHER
32 THAN A YEAR, THE CAP AMOUNT SHALL BE ADJUSTED PROPORTIONATELY IN DETER-
33 MINING WHETHER THE SUBSCRIPTION PRICE EXCEEDS THE CAP AMOUNT. IF THE
34 CONTRACT FOR THE SALE OF THE ELECTRONIC NEWS SERVICE GRANTS MORE THAN
35 ONE PERSON THE RIGHT TO VIEW THE ELECTRONIC NEWS SERVICE, THE RECEIPTS
36 FROM THE SALE OF, OR THE CONSIDERATION GIVEN FOR, OR FOR THE USE OF, THE
37 SERVICE WILL BE DEEMED NOT TO EXCEED THE CAP AMOUNT ONLY IF THE LISTED
38 SELLING PRICE FOR AN INDIVIDUAL SUBSCRIPTION ON THE DAY THE CONTRACT
39 COMMENCES DOES NOT EXCEED THE CAP AMOUNT.

40 (2) RECEIPTS FROM THE SALE OF AN ELECTRONIC PERIODICAL AND CONSIDER-
41 ATION GIVEN, OR CONTRACTED TO BE GIVEN FOR, OR FOR THE USE OF, AN ELEC-
42 TRONIC PERIODICAL SHALL BE EXEMPT FROM THE TAXES IMPOSED BY PARAGRAPH
43 ONE OR NINE OF SUBDIVISION (C) OF SECTION ELEVEN HUNDRED FIVE AND CLAUSE
44 (C) OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED TEN OF THIS ARTICLE.

45 (3) IF AN ELECTRONIC PERIODICAL IS SOLD TOGETHER WITH ANY OTHER COMPO-
46 NENTS THAT ARE TAXABLE UNDER THIS ARTICLE (OTHER THAN AN ELECTRONIC NEWS
47 SERVICE) FOR A SINGLE PRICE, THE EXEMPTION IN PARAGRAPH TWO OF THIS
48 SUBDIVISION SHALL NOT APPLY TO THE RECEIPTS FROM THE SALE OF, OR CONSID-
49 ERATION GIVEN, OR CONTRACTED TO BE GIVE FOR, OR FOR THE USE OF, THE
50 ELECTRONIC PERIODICAL AND SUCH OTHER COMPONENTS UNLESS THE VENDOR SELLS
51 SUCH ELECTRONIC PERIODICAL AND SUCH OTHER COMPONENTS SEPARATELY IN THE
52 REGULAR COURSE OF BUSINESS. IF THE REQUIREMENT IN THE PRECEDING SENTENCE
53 IS SATISFIED, THEN THE EXEMPTION WILL APPLY TO AN AMOUNT EQUAL TO THE
54 BUNDLED PRICE MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE
55 PRICE OF THE ELECTRONIC PERIODICAL WHEN SOLD SEPARATELY AND THE DENOMI-
56 NATOR OF WHICH IS THE SUM OF THE PRICE OF THE ELECTRONIC PERIODICAL WHEN

1 SOLD SEPARATELY AND THE PRICE OF THE OTHER COMPONENTS OF THE TRANSACTION
2 WHEN SOLD SEPARATELY.

3 (4) IF AN ELECTRONIC NEWS SERVICE IS SOLD TOGETHER WITH OTHER COMPO-
4 NENTS FOR A SINGLE PRICE, THE EXEMPTION IN PARAGRAPH ONE OF THIS SUBDI-
5 VISION SHALL NOT APPLY TO THE RECEIPTS FROM THE SALE OF, OR CONSIDER-
6 ATION GIVEN, OR CONTRACTED TO BE GIVEN, FOR, OR FOR THE USE OF, THE
7 ELECTRONIC NEWS SERVICE AND THE OTHER COMPONENTS IN THE TRANSACTION
8 UNLESS ONE OF THE FOLLOWING EXCEPTIONS APPLIES AND ONLY TO THE EXTENT
9 INDICATED:

10 (I) THE PROVIDER OF THE ELECTRONIC NEWS SERVICE DOES NOT SEPARATELY
11 SELL THE ELECTRONIC NEWS SERVICE IN THE REGULAR COURSE OF BUSINESS, THE
12 OTHER COMPONENTS ARE NOT TAXABLE UNDER THIS ARTICLE, AND THE BUNDLED
13 PRICE IS LESS THAN THE CAP AMOUNT, IN WHICH CASE THE EXEMPTION APPLIES
14 TO THE FULL BUNDLED PRICE; OR

15 (II) THE PROVIDER OF THE ELECTRONIC NEWS SERVICE SELLS THE ELECTRONIC
16 NEWS SERVICE AND EACH OF THE OTHER COMPONENTS OF THE TRANSACTION SEPA-
17 RATELY IN THE REGULAR COURSE OF BUSINESS, WHETHER OR NOT THE COMPONENTS
18 ARE TAXABLE UNDER THIS ARTICLE, AND THE SEPARATE PRICE OF THE ELECTRONIC
19 NEWS SERVICE DOES NOT EXCEED THE CAP AMOUNT. IF THE CONDITIONS IN THIS
20 SUBPARAGRAPH ARE MET, THE EXEMPTION PROVIDED BY PARAGRAPH ONE OF THIS
21 SUBDIVISION WILL APPLY ONLY TO AN AMOUNT EQUAL TO THE BUNDLED PRICE
22 MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS THE PRICE OF THE
23 ELECTRONIC NEWS SERVICE WHEN SOLD SEPARATELY IN THE REGULAR COURSE OF
24 BUSINESS, AND THE DENOMINATOR OF WHICH IS THE SUM OF THE PRICE OF THE
25 ELECTRONIC NEWS SERVICE WHEN SOLD SEPARATELY IN THE REGULAR COURSE OF
26 BUSINESS AND THE PRICES OF THE OTHER COMPONENTS WHEN SOLD SEPARATELY IN
27 THE REGULAR COURSE OF BUSINESS; PROVIDED, HOWEVER, THAT IN NO CASE SHALL
28 THE EXEMPT AMOUNT BE GREATER THAN THE AMOUNT OF THE CHARGE FOR THE ELEC-
29 TRONIC NEWS SERVICE WHEN SOLD SEPARATELY IN THE REGULAR COURSE OF BUSI-
30 NESS.

31 (5) FOR THE PURPOSES OF THIS SUBDIVISION "BUNDLED PRICE" MEANS THE
32 PRICE AT WHICH AN ELECTRONIC NEWS SERVICE OR AN ELECTRONIC PERIODICAL IS
33 SOLD TOGETHER WITH ANY OTHER COMPONENTS FOR ONE PRICE; AND "COMPONENT"
34 MEANS ANY PROPERTY, SERVICE, OR OTHER ITEM OF WHATEVER NATURE THAT IS
35 SOLD TOGETHER WITH AN ELECTRONIC NEWS SERVICE OR ELECTRONIC PERIODICAL
36 FOR ONE PRICE.

37 (6) NOTHING IN THIS SUBDIVISION SHALL EXEMPT, OR BE CONSTRUED TO
38 EXEMPT, ANY SEPARATE CHARGE BY THE VENDOR OF AN ELECTRONIC NEWS SERVICE
39 OR ELECTRONIC PERIODICAL FOR OTHER INFORMATION SERVICES, OR ANY OTHER
40 PROPERTY OR SERVICE SUBJECT TO TAX UNDER THIS ARTICLE, THAT DOES NOT
41 CONSTITUTE AN ELECTRONIC NEWS SERVICE OR ELECTRONIC PERIODICAL.

42 S 6. Severability clause. If any clause, sentence, paragraph, subdivi-
43 sion, section or part of this act shall be adjudged by any court of
44 competent jurisdiction to be invalid, this act shall be null, void, and
45 without effect in its entirety and thus prior law shall be reinstated.
46 It is hereby declared to be the intent of the legislature that this act
47 would not have been enacted if such invalid provisions had not been
48 included herein.

49 S 7. This act shall take effect on the first day of a sales tax quar-
50 terly period, as described in subdivision (b) of section 1136 of the tax
51 law, next commencing at least 90 days after this act shall have become a
52 law and shall apply in accordance with the applicable transitional
53 provisions in sections 1106 and 1217 of the tax law; provided, however,
54 that the commissioner of taxation and finance shall compute the cap
55 amount under subparagraph (ii) of paragraph 37 of subdivision (b) of
56 section 1101 of the tax law, as added by section one of this act, based

1 on prices in effect during the first seven days of the first calendar
2 month next commencing after this act shall have become a law, and the
3 commissioner of taxation and finance shall publish that cap amount at
4 least one month prior to the date this act takes effect and such cap
5 amount shall apply to sales made, services rendered, or uses occurring
6 from the date this act takes effect through the next succeeding May
7 thirty-first.