

4816--A

2015-2016 Regular Sessions

I N S E N A T E

April 20, 2015

Introduced by Sens. FUNKE, GRIFFO, RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to sales and compensating use taxes imposed with respect to certain aircraft and vessels by article 28 and pursuant to the authority of article 29 of such law; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Paragraph (A) of subdivision (i) of section 1111 of the tax
2 law, as amended by section 1 of part TT of chapter 59 of the laws of
3 2015, is amended to read as follows:
4 (A) Notwithstanding any contrary provisions of this article or other
5 law, with respect to any lease for a term of one year or more of (1) a
6 motor vehicle, as defined in section one hundred twenty-five of the
7 vehicle and traffic law, with a gross vehicle weight of ten thousand
8 pounds or less, [or] (2) a vessel, as defined in section twenty-two
9 hundred fifty of such law (including any inboard or outboard motor and
10 any trailer, as defined in section one hundred fifty-six of such law,
11 leased in conjunction with such a vessel) AND (3) NONCOMMERCIAL AIRCRAFT
12 HAVING A SEATING CAPACITY OF LESS THAN TWENTY PASSENGERS AND A MAXIMUM
13 PAYLOAD CAPACITY OF LESS THAN SIX THOUSAND POUNDS, or an option to renew
14 such a lease or a similar contractual provision, all receipts due or
15 consideration given or contracted to be given for such property under
16 and for the entire period of such lease, option to renew or similar
17 provision, or combination of them, shall be deemed to have been paid or
18 given and shall be subject to tax, and any such tax due shall be
19 collected, as of the date of first payment under such lease, option to

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

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1 renew or similar provision, or combination of them, or as of the date of
2 registration of such property with the commissioner of motor vehicles,
3 whichever is earlier. Notwithstanding any inconsistent provisions of
4 subdivision (b) of this section or of section eleven hundred seventeen
5 of this article or of other law, for purposes of such a lease, option to
6 renew or similar provision originally entered into outside this state,
7 by a lessee (1) who was a resident of this state, and leased such prop-
8 erty for use outside the state and who subsequently brings such property
9 into this state for use here or (2) who was a nonresident and subse-
10 quently becomes a resident and brings the property into this state for
11 use here, any remaining receipts due or consideration to be given after
12 such lessee brings such property into this state shall be subject to tax
13 as if the lessee had entered into or exercised such lease, option to
14 renew or similar provision, or combination thereof, for the first time
15 in this state and the relevant provisions of sections eleven hundred ten
16 concerning imposition and computation of tax, eleven hundred eighteen
17 concerning exemption from use tax for tax paid to another jurisdiction,
18 eleven hundred thirty-two concerning presumption of taxability and
19 conditions for registration and eleven hundred thirty-nine concerning
20 refunds, of this article, shall be applicable to any sales or compensat-
21 ing use tax paid by the lessee before the lessee brought the property
22 into this state, except to the extent that any such provision is incon-
23 sistent with a provision of this subdivision. For purposes of this
24 subdivision, (1) a lease for a term of one year or more shall include
25 any lease for a shorter term which includes an option to renew or other
26 like provision (or more than one of such option or other provision)
27 where the cumulative period that the lease, with or without such option
28 or provision, may be in effect upon exercise of such option or provision
29 is one year or more and (2) receipts due and consideration given or
30 contracted to be given under any such lease or other provision for
31 excess mileage charges shall be subject to tax as and when paid or due.

32 S 2. Subdivision (q) of section 1111 of the tax law, as amended by
33 section 2 of part TT of chapter 59 of the laws of 2015, is amended to
34 read as follows:

35 (q) (1) The exclusions from the definition of retail sale in subpara-
36 graph (iv) of paragraph four of subdivision (b) of section eleven
37 hundred one of this article shall not apply to transfers, distributions,
38 or contributions of [a] AN AIRCRAFT OR vessel, except where, in the case
39 of the exclusion in subclause (I) of clause (A) of such subparagraph
40 (iv), the two corporations to be merged or consolidated are not affil-
41 iated persons with respect to each other. For purposes of this subdivi-
42 sion, corporations are affiliated persons with respect to each other
43 where (i) more than five percent of their combined shares are owned by
44 members of the same family, as defined by paragraph four of subsection
45 (c) of section two hundred sixty-seven of the internal revenue code of
46 nineteen hundred eighty-six; (ii) one of the corporations has an owner-
47 ship interest of more than five percent, whether direct or indirect, in
48 the other; or (iii) another person or a group of other persons that are
49 affiliated persons with respect to each other hold an ownership interest
50 of more than five percent, whether direct or indirect, in each of the
51 corporations.

52 (2) Notwithstanding any contrary provision of law, in relation to any
53 transfer, distribution, or contribution of [a] AN AIRCRAFT OR vessel
54 that qualifies as a retail sale as a result of paragraph one of this
55 subdivision, the sales tax imposed by subdivision (a) of section eleven
56 hundred five of this part shall be computed based on the price at which

1 the seller purchased the tangible personal property, provided that where
2 the seller or purchaser affirmatively shows that the seller owned the
3 property for six months prior to making the transfer, distribution or
4 contribution covered by paragraph one of this subdivision, such AIRCRAFT
5 OR vessel shall be taxed on the basis of the current market value of the
6 AIRCRAFT OR vessel at the time of that transfer, distribution, or
7 contribution. For the purposes of the prior sentence, "current market
8 value" shall not exceed the cost of the AIRCRAFT OR vessel. See subdi-
9 vision (b) of this section for a similar rule on the computation of any
10 compensating use tax due under section eleven hundred ten of this part
11 on such transfers, distributions, or contributions.

12 (3) A purchaser of [a] AN AIRCRAFT OR vessel covered by paragraph one
13 of this subdivision will be entitled to a refund or credit against the
14 sales or compensating use tax due as a result of a transfer, distrib-
15 ution, or contribution of such AIRCRAFT OR vessel in the amount of any
16 sales or use tax paid to this state or any other state on the seller's
17 purchase or use of the AIRCRAFT OR vessel so transferred, distributed or
18 contributed, but not to exceed the tax due on the transfer, distrib-
19 ution, or contribution of the AIRCRAFT OR vessel or on the purchaser's
20 use in the state of the AIRCRAFT OR vessel so transferred, distributed
21 or contributed. An application for a refund or credit under this subdi-
22 vision must be filed and shall be in such form as the commissioner may
23 prescribe. Where an application for credit has been filed, the applicant
24 may immediately take such credit on the return which is due coincident
25 with or immediately subsequent to the time the application for credit is
26 filed. However, the taking of the credit on the return shall be deemed
27 to be part of the application for credit. Provided that the commissioner
28 may, in his or her discretion and notwithstanding any other law, waive
29 the application requirement for any or all classes of persons where the
30 amount of the credit or refund is equal to the amount of the tax due
31 from the purchaser. The provisions of subdivisions (a), (b), and (c) of
32 section eleven hundred thirty-nine of this article shall apply to appli-
33 cations for refund or credit under this subdivision. No interest shall
34 be allowed or paid on any refund made or credit allowed under this
35 subdivision. If a refund is granted or a credit allowed under this para-
36 graph, the seller or purchaser shall not be eligible for a refund or
37 credit pursuant to subdivision seven of section eleven hundred eighteen
38 of this article with regard to the same purchase or use.

39 S 3. Paragraph 21-a of subdivision (a) of section 1115 of the tax law
40 is REPEALED.

41 S 4. Subdivision (jj) of section 1115 of the tax law, as added by
42 section 1 of part SS of chapter 59 of the laws of 2015, is REPEALED.

43 S 5. Subdivision 13 of section 1118 of the tax law is REPEALED.

44 S 6. This act shall take effect immediately.