STATE OF NEW YORK

918

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. CARROLL, EPSTEIN, SIMON, L. ROSENTHAL, GOTTFRIED, HYNDMAN, BARRON, WEPRIN, TAYLOR, REYES, NIOU, FAHY, ABINANTI -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to the imposition of sales and compensating use taxes with respect to certain aircraft; and to repeal paragraph 21-a of subdivision (a) of section 1115 of the tax law, relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (A) of subdivision (i) of section 1111 of the tax law, as added by section 1 of part TT of chapter 59 of the laws of 2015, is amended to read as follows:

(A) Notwithstanding any contrary provisions of this article or other law, with respect to any lease for a term of one year or more of (1) a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, with a gross vehicle weight of ten thousand pounds or less, [~~or~~] (2) a vessel, as defined in section twenty-two hundred fifty of such law (including any inboard or outboard motor and any trailer, as defined in section one hundred fifty-six of such law, leased in conjunction with such a vessel) **or (3) noncommercial aircraft having a seating capacity of less than twenty passengers and a maximum capacity of less than six thousand pounds**, or an option to renew such a lease or a similar contractual provision, all receipts due or consideration given or contracted to be given for such property under and for the entire period of such lease, option to renew or similar provision, or combination of them, shall be deemed to have been paid or given and shall be subject to tax, and any such tax due shall be collected, as of the date of first payment under such lease, option to renew or similar provision, or combination of them, or as of the date of registration of such property with the commissioner of motor vehicles, whichever is

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

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earlier. Notwithstanding any inconsistent provisions of subdivision (b) of this section or of section eleven hundred seventeen of this article or of other law, for purposes of such a lease, option to renew or similar provision originally entered into outside this state, by a lessee (1) who was a resident of this state, and leased such property for use outside the state and who subsequently brings such property into this state for use here or (2) who was a nonresident and subsequently becomes a resident and brings the property into this state for use here, any remaining receipts due or consideration to be given after such lessee brings such property into this state shall be subject to tax as if the lessee had entered into or exercised such lease, option to renew or similar provision, or combination thereof, for the first time in this state and the relevant provisions of sections eleven hundred ten concerning imposition and computation of tax, eleven hundred eighteen concerning exemption from use tax for tax paid to another jurisdiction, eleven hundred thirty-two concerning presumption of taxability and conditions for registration and eleven hundred thirty-nine concerning refunds, of this article, shall be applicable to any sales or compensating use tax paid by the lessee before the lessee brought the property into this state, except to the extent that any such provision is inconsistent with a provision of this subdivision. For purposes of this subdivision, (1) a lease for a term of one year or more shall include any lease for a shorter term which includes an option to renew or other like provision (or more than one of such option or other provision) where the cumulative period that the lease, with or without such option or provision, may be in effect upon exercise of such option or provision is one year or more and (2) receipts due and consideration given or contracted to be given under any such lease or other provision for excess mileage charges shall be subject to tax as and when paid or due.

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

(q) (1) The exclusions from the definition of retail sale in subparagraph (iv) of paragraph four of subdivision (b) of section eleven hundred one of this article shall not apply to transfers, distributions, or contributions of **an aircraft or** a vessel, except where, in the case of the exclusion in subclause (I) of clause (A) of such subparagraph (iv), the two corporations to be merged or consolidated are not affiliated persons with respect to each other. For purposes of this subdivision, corporations are affiliated persons with respect to each other where (i) more than five percent of their combined shares are owned by members of the same family, as defined by paragraph four of subsection (c) of section two hundred sixty-seven of the internal revenue code of nineteen hundred eighty-six; (ii) one of the corporations has an ownership interest of more than five percent, whether direct or indirect, in the other; or (iii) another person or a group of other persons that are affiliated persons with respect to each other hold an ownership interest of more than five percent, whether direct or indirect, in each of the corporations.

(2) Notwithstanding any contrary provision of law, in relation to any transfer, distribution, or contribution of **an aircraft or** a vessel that qualifies as a retail sale as a result of paragraph one of this subdivision, the sales tax imposed by subdivision (a) of section eleven hundred five of this part shall be computed based on the price at which the seller purchased the tangible personal property, provided that where the seller or purchaser affirmatively shows that the seller owned the prop-

erty for six months prior to making the transfer, distribution or contribution covered by paragraph one of this subdivision, such **aircraft or** vessel shall be taxed on the basis of the current market value of the **aircraft or** vessel at the time of that transfer, distribution, or contribution. For the purposes of the prior sentence, "current market value" shall not exceed the cost of the **aircraft or** vessel. See subdivision (b) of this section for a similar rule on the computation of any compensating use tax due under section eleven hundred ten of this part on such transfers, distributions, or contributions.

(3) A purchaser of **an aircraft or** a vessel covered by paragraph one of this subdivision will be entitled to a refund or credit against the sales or compensating use tax due as a result of a transfer, distribution, or contribution of such **aircraft or** vessel in the amount of any sales or use tax paid to this state or any other state on the seller's purchase or use of the **aircraft or** vessel so transferred, distributed or contributed, but not to exceed the tax due on the transfer, distribution, or contribution of the **aircraft or** vessel or on the purchaser's use in the state of the **aircraft or** vessel so transferred, distributed or contributed. An application for a refund or credit under this subdivision must be filed and shall be in such form as the commissioner may prescribe. Where an application for credit has been filed, the applicant may immediately take such credit on the return which is due coincident with or immediately subsequent to the time the application for credit is filed. However, the taking of the credit on the return shall be deemed to be part of the application for credit. Provided that the commissioner may, in his or her discretion and notwithstanding any other law, waive the application requirement for any or all classes of persons where the amount of the credit or refund is equal to the amount of the tax due from the purchaser. The provisions of subdivisions (a), (b), and (c) of section eleven hundred thirty-nine of this article shall apply to applications for refund or credit under this subdivision. No interest shall be allowed or paid on any refund made or credit allowed under this subdivision. If a refund is granted or a credit allowed under this paragraph, the seller or purchaser shall not be eligible for a refund or credit pursuant to subdivision seven of section eleven hundred eighteen of this article with regard to the same purchase or use.

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

§ 4. This act shall take effect June 1, 2021.