§ 1105. Imposition of sales tax. On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

(b) (1) The receipts from every sale, other than sales for resale, of the following: (A) gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature, including the transportation, transmission or distribution of gas or electricity, even if sold separately; (B) telephony and telegraphy and telephone and telegraph service of whatever nature except interstate and international telephony and telegraphy and telephone and telegraph service and except any telecommunications service the receipts from the sale of which are subject to tax under paragraph two of this subdivision; (C) a telephone answering service; and (D) a prepaid telephone calling service.

(2) The receipts from every sale of mobile telecommunications service provided by a home service provider, other than sales for resale, that are voice services, or any other services that are taxable under subparagraph (B) of paragraph one of this subdivision, sold for a fixed periodic charge (not separately stated), whether or not sold with other services.

(3) The tax imposed pursuant to this subdivision is imposed on receipts from charges for intrastate mobile telecommunications service of whatever nature in any state if the mobile telecommunications customer's place of primary use is in this state.

(4) (A) For the purpose of subparagraph (B) of paragraph one of this subdivision, receipts from the sale of telephony or telephone service constituting the actual delivery of telephony or telephone service under a prepaid telephone calling service (for instance, when the receipt is represented by a debit to a prepaid account) shall be excluded from the receipts subject to tax under such subparagraph; and (B) for purposes of subparagraph (B) of paragraph one and paragraph two of this subdivision, a particular sale of telephony or telephone service to a vendor that resells such telephony or telephone service as a component of a prepaid telephone calling service shall be deemed a sale for resale of telephony or telegraph service.

(c) The receipts from every sale, except for resale, of the following

services:

(1) The furnishing of information by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons, and excluding the services of advertising or other agents, or other persons acting in a representative capacity, and information services used by newspapers, electronic news services, radio broadcasters and television broadcasters in the collection and dissemination of news, and excluding meteorological services.

(2) Producing, fabricating, processing, printing or imprinting tangible personal property, performed for a person who directly or indirectly furnishes the tangible personal property, not purchased by him for resale, upon which services are performed.

(3) Installing tangible personal property, excluding a mobile home, or maintaining, servicing or repairing tangible personal property, including a mobile home, not held for sale in the regular course of business, whether or not the services are performed directly or by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith, except:

(i) such services rendered by an individual who is engaged directly by a private home owner or lessee in or about his residence and who is not in a regular trade or business offering his services to the public; and

(ii) any receipts from laundering, dry-cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining; and

(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter; and

(iv) such services rendered with respect to commercial vessels and property used by or purchased for the use of such vessels, as such

vessels and property are specified in paragraph eight of subdivision (a) of section eleven hundred fifteen of this article; and

(v) such services rendered with respect to commercial aircraft, machinery or equipment and property used by or purchased for the use of such aircraft as such aircraft, machinery or equipment, and property are specified in paragraph twenty-one of subdivision (a) of section eleven hundred fifteen of this article; and

(vi) such services rendered with respect to tangible personal property for use or consumption predominantly either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both, as such tangible personal property is specified in paragraph six of subdivision (a) of section eleven hundred fifteen of this article.

(vii) such services rendered with respect to fishing vessels and property used by or purchased for such vessels as such vessels are specified in paragraph twenty-four of subdivision (a) of section eleven hundred fifteen of this article.

(viii) such services rendered with respect to railroad rolling stock primarily engaged in carrying freight in intrastate, interstate or foreign commerce, but not including any charge for parts or other tangible personal property whether such property has become a physical component part of the property upon which the services are performed or has been transferred to the purchaser of the services in conjunction with the performance of the services subject to the tax.

(ix) such services rendered with respect to tangible property used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting.

(x) such services rendered with respect to property described in paragraph twelve-a of subdivision (a) of section eleven hundred fifteen of this article.

* (xi) Such services rendered with respect to property described in paragraph twelve-b of section eleven hundred fifteen of this article.

* NB Expired September 1, 2003

Provided, however, that nothing contained in this paragraph three shall be construed to exclude from tax under this paragraph or under

subdivision (b) of this section any charge, made by a person furnishing service subject to tax under subdivision (b) of this section, for installing property at the premises of a purchaser of such a taxable service for use in connection with such service.

(4) Storing all tangible personal property not held for sale in the regular course of business and the rental of safe deposit boxes or similar space.

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this article, but excluding (i) services rendered by an individual who is not in a regular trade or business offering his services to the public, (ii) services rendered directly with respect to real property, property or land used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting, (iii) services rendered with respect to real property, property or land used or consumed predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both and (iv) services of removal of waste material from a facility regulated as a transfer station or construction and demolition debris processing facility by the department of environmental conservation, provided that the waste material to be removed was not generated by the facility.

(6) Providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles provided, however, this paragraph shall not apply to such facilities owned and operated by a public corporation, as defined by section sixty-six of the general construction law, other than a public benefit corporation, as defined by such section sixty-six, created by interstate compact or at least half of whose members are appointed by the governor, or any agency or instrumentality of a municipal corporation or district corporation as defined by such

section sixty-six. Provided, however, receipts for such services paid to a homeowner's association by its members or receipts paid by members of a homeowner's association to a person leasing the parking facility from the homeowner's association shall not be subject to the tax imposed by this paragraph. For purposes of this paragraph, a homeowner's association is an association (including a cooperative housing or apartment corporation) (i) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision and (ii) which owns or operates a garage, parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles located in such area for use (whether or not exclusive) by such owners or residents.

(7) Interior decorating and designing services, (whether or not in conjunction with the sale of tangible personal property), by whomsoever performed, including interior decorators and designers, architects or engineers; notwithstanding the foregoing, such services shall not include services which consist of the practice of architecture, as defined in section seventy-three hundred one of the education law, or the practice of engineering, as defined in section seventy-two hundred one of the education law, if the services are performed by an architect or engineer having a license or permit under the education law.

(8) Protective and detective services, including, but not limited to, all services provided by or through alarm or protective systems of every nature, including, but not limited to, protection against burglary, theft, fire, water damage or any malfunction of industrial processes or any other malfunction of or damage to property or injury to persons, detective agencies, armored car services and guard, patrol and security services of every nature other than the performance of such services by a security officer licensed by the New York Waterfront Commission or the waterfront commission of New York harbor, whether or not tangible personal property is transferred in conjunction therewith.

(9) (i) The furnishing or provision of an entertainment service or of an information service (but not an information service subject to tax under paragraph one of this subdivision), which is furnished, provided,

or delivered by means of telephony or telegraphy or telephone or telegraph service (whether intrastate or interstate) of whatever nature, such as entertainment or information services provided through 800 or 900 numbers or mass announcement services or interactive information network services. Provided, however, that in no event (i) shall the furnishing or provision of an information service be taxed under this paragraph unless it would otherwise be subject to taxation under paragraph one of this subdivision if it were furnished by printed, mimeographed or multigraphed matter or by duplicating written or printed matter in any other manner nor (ii) shall the provision of cable television service to customers be taxed under this paragraph.

(ii) Notwithstanding the rate and date set forth in the opening undesignated paragraph of this section and notwithstanding the opening undesignated paragraph of this subdivision, on and after September first, nineteen hundred ninety-three, in addition to any other tax imposed under this section, and in addition to any other tax or fee imposed under any other provision of law, there is hereby imposed and there shall be paid an additional tax at the rate of five percent upon the receipts which are subject to tax under subparagraph (i) of this paragraph on the furnishing or provision of an entertainment or information service which is received by the customer exclusively in an aural manner. Such additional tax shall not be imposed by section eleven hundred seven, eleven hundred eight or eleven hundred nine of this article and shall not be included among the taxes authorized to be imposed pursuant to the authority of article twenty-nine of this chapter.

(10) Transportation service, whether or not any tangible personal property is transferred in conjunction therewith, and regardless of whether the charge is paid in this state or out of state so long as the service is provided in this state.

Wages, salaries and other compensation paid by an employer to an employee for performing as an employee the services described in paragraphs (1) through (9) of this subdivision (c) are not receipts subject to the taxes imposed under such subdivision.

(d) (i) The receipts from every sale, other than sales for resale, of beer, wine or other alcoholic beverages or any other drink of any

nature, or from every sale, other than sales for resale, of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers (except those receipts taxed pursuant to subdivision (f) of this section):

(1) in all instances where the sale is for consumption on the premises where sold;

(2) in those instances where the vendor or any person whose services are arranged for by the vendor, after the delivery of the food or drink by or on behalf of the vendor for consumption off the premises of the vendor, serves or assists in serving, cooks, heats or provides other services with respect to the food or drink; and

(3) in those instances where the sale is made through a vending machine that is activated by use of coin, currency, credit card or debit card (except the sale of drinks in a heated state made through such a vending machine) or is for consumption off the premises of the vendor, except where food (other than sandwiches) or drink or both are (A) sold in an unheated state and, (B) are of a type commonly sold for consumption off the premises and in the same form and condition, quantities and packaging, in establishments which are food stores other than those principally engaged in selling foods prepared and ready to be eaten.

(ii) The tax imposed by this subdivision shall not apply to:

(A) food or drink which is sold to an air line for consumption while in flight;

(B) food or drink sold to a student of a nursery school, kindergarten, elementary or secondary school at a restaurant or cafeteria located on the premises of such a school, or food or drink, other than beer, wine, or other alcoholic beverages, sold at a restaurant, tavern or other establishment located on the premises of a college, university or a school (other than a nursery school, kindergarten, elementary or secondary school) to a student enrolled therein who purchases such food or drink under a contractual arrangement whereby the student does not pay cash at the time such student is served, provided the school, college or university described in this subparagraph is operated by an exempt organization described in subdivision (a) of section eleven

hundred sixteen, or is created, incorporated, registered, or licensed by the state legislature or pursuant to the education law or the regulations of the commissioner of education, or is incorporated by the regents of the university of the State of New York or with their consent or the consent of the commissioner of education as provided in section two hundred sixteen of the education law; provided, further, that the contractual arrangement between an enrolled student and a college, university or school may include a provision permitting such enrolled student to donate unused meal funds, meals or meal points to other students enrolled in such school, college or university who are facing food insecurity through a program operated by such school, college or university directly or through a contract with a nonprofit organization that is exempt from federal taxation pursuant to subsection (c) of section five hundred one of the internal revenue code, provided that no part of the donated funds, meals or meal points inure to the benefit of such school, college, university or nonprofit organization; and

(C) Sales by a brewery licensed under section fifty-one of the alcoholic beverage control law, or a farm brewery licensed under section fifty-one-a of such law, of no more than four samples of beer not exceeding four fluid ounces each, and each sample shall be a different beer than the others. Only a customer's first purchase during each calendar day at each licensed entity shall be exempt under this subparagraph.

(e) (1) The rent for every occupancy of a room or rooms in a hotel or short term rental unit in this state, except that the tax shall not be imposed upon (i) a permanent resident, or (ii) where the rent is not more than at the rate of two dollars per day.

(2) Except as provided in subdivision (r) of section eleven hundred eleven of this part, when occupancy is provided, for a single consideration, with property, services, amusement charges, or any other items, the separate sale of which is not subject to tax under this article, and the rent paid for such occupancy does not qualify for the exemption in subdivision (kk) of section eleven hundred fifteen of this article, the entire consideration shall be treated as rent subject to tax under paragraph one of this subdivision; provided, however, that where the amount of the rent for occupancy is stated separately from the price of such property, services, amusement charges, or other items, on

any sales slip, invoice, receipt, or other statement given the occupant, and such rent is reasonable in relation to the value of such property, services, amusement charges or other items, only such separately stated rent will be subject to tax under paragraph one of this subdivision.

(f) (1) Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state, except charges for admission to combative sports which charges are taxed under any other law of this state, or dramatic or musical arts performances, or live circus performances, or motion picture theaters, and except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools. For any person having the permanent use or possession of a box or seat or a lease or a license, other than a season ticket, for the use of a box or seat at a place of amusement, the tax shall be upon the amount for which a similar box or seat is sold for each performance or exhibition at which the box or seat is used or reserved by the holder, licensee or lessee, and shall be paid by the holder, licensee or lessee.

(2) (i) The dues paid to any social or athletic club in this state if the dues of an active annual member, exclusive of the initiation fee, are in excess of ten dollars per year, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars. Where the tax on dues applies to any such social or athletic club, the tax shall be paid by all members, other than honorary members, thereof regardless of the amount of their dues, and shall be paid on all dues or initiation fees for a period commencing on or after August first, nineteen hundred sixty-five. In the case of a life membership, the tax shall be upon the amount paid as life membership dues, however, a life member, other than an honorary member, paying an annual sales tax, based on the dues of an active annual member, shall continue such payments until the total amount of such tax paid is equal to the amount of tax that would have otherwise been due had the tax been imposed at the time such paid life membership has been purchased and at the then applicable rate.

(ii) Dues and initiation fees paid to the following shall not be subject to the tax imposed by this paragraph:

(A) A fraternal society, order or association operating under the

lodge system;

(B) Any fraternal association of students of a college or university;

(C) A homeowners association. For purposes of this subparagraph, a homeowners association is an association (including a cooperative housing or apartment corporation) (I) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision and (II) which operates social or athletic facilities located in such area for use (whether or not exclusive) by such owners or residents.

(3) The amount paid as charges of a roof garden, cabaret or other similar place in the state.