§ 1115. Exemptions from sales and use taxes. (a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

(1) (A) Food, food products, beverages, dietary foods and health supplements, sold for human consumption but not including (i) candy and confectionery, (ii) fruit drinks which contain less than seventy percent of natural fruit juice, (iii) soft drinks, sodas and beverages such as are ordinarily dispensed at soda fountains or in connection therewith (other than coffee, tea and cocoa) and (iv) beer, wine or other alcoholic beverages, all of which shall be subject to the retail sales and compensating use taxes, whether or not the item is sold in liquid form. Nothing in this subparagraph shall be construed as exempting food or drink from the tax imposed under subdivision (d) of section eleven hundred five of this article.

(B) Until May thirty-first, two thousand twenty-nine, the food and drink excluded from the exemption provided by clauses (i), (ii) and (iii) of subparagraph (A) of this paragraph, and bottled water, shall be exempt under this subparagraph: (i) when sold for one dollar and fifty cents or less through any vending machine that accepts coin or currency only; or (ii) when sold for two dollars or less through any vending machine that accepts any form of payment other than coin or currency, whether or not it also accepts coin or currency.

(2) Water, when delivered to the consumer through mains or pipes.

(3) Drugs and medicines intended for use, internally or externally, in the cure, mitigation, treatment or prevention of illnesses or diseases in human beings, medical equipment (including component parts thereof) and supplies required for such use or to correct or alleviate physical incapacity, and products consumed by humans for the preservation of health but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein or medical equipment (including component parts thereof) and supplies, other than such drugs and medicines, purchased at retail for use in performing medical and similar services for compensation.

(3-a) Menstrual products, including, but not limited to, pads, tampons and panty liners.

(3-b) Adult-use cannabis products as defined by article twenty-C of

this chapter.

(4) Prosthetic aids, hearing aids, eyeglasses and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings.

(5) Newspapers and periodicals.

(6) (A) Tangible personal property, whether or not incorporated in a building or structure, 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.

(B) With respect to the exemption of motor vehicles under this paragraph, (i) use of a motor vehicle either in the production phase of farming or in a commercial horse boarding operation, or in both, shall be defined as any use of the motor vehicle on property either farmed or used in a commercial horse boarding operation, or both, by the motor vehicle purchaser or user or in direct and uninterrupted trips between properties farmed or used in such operation, or both, by the motor vehicle purchaser or user, and (ii) "predominantly" shall mean that more than fifty percent of the motor vehicle's use is either in the production phase of farming or in a commercial horse boarding operation, or in both. The percentage of such vehicle's use either in the production phase of farming or in a commercial horse boarding operation, or in both, may be computed either on the basis of mileage or hours of use, at the discretion of the motor vehicle purchaser or user. A person may purchase a motor vehicle qualifying for exemption under this paragraph without payment of tax imposed by section eleven hundred five or eleven hundred ten of this article by furnishing the vendor a properly completed exemption certificate promulgated by the commissioner; and such purchaser may register such vehicle or apply for a certificate of title for such vehicle with the commissioner of motor vehicles or a county clerk, without payment of such taxes, by furnishing such a properly completed certificate to such commissioner or clerk.

(7) Tangible personal property sold by a mortician, undertaker or funeral director. However, all tangible personal property sold to a mortician, undertaker or funeral director for use in the conducting of funerals shall not be deemed a sale for resale within the meaning of paragraph (4) of subdivision (b) of section eleven hundred one of this chapter and shall not be exempt from the retail sales tax.

(8) Commercial vessels primarily engaged in interstate or foreign commerce and property used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs (other than articles purchased for the original equipping of a new ship).

(9) Fuel sold to an air line for use in its airplanes.

(10) Tangible personal property purchased for use or consumption directly and predominantly in research and development in the experimental or laboratory sense. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects.

(11) The flags of the United States of America and the state of New York.

(11-a) Any military decorations, including but not limited to, ribbons, medals, mini-medals, and lapel pins, when sold to a purchaser: (i) who is a veteran of the United States provided that the purchaser shall present to the vendor proof in the form of discharge papers, or other official documentation, of his or her veteran status; or (ii) who is an active member of the military provided that the purchaser shall present to the vendor proof or other official documentation of actual military service.

(11-b) Military service flags, prisoner of war flags and blue star banners.

(12) Machinery or equipment for use or consumption directly and predominantly in the production of tangible personal property, gas, electricity, refrigeration or steam for sale, by manufacturing, processing, generating, assembling, refining, mining or extracting, but not including parts with a useful life of one year or less or tools or supplies used in connection with such machinery or equipment. This exemption shall include all pipe, pipeline, drilling rigs, service rigs, vehicles and associated equipment used in the drilling, production and operation of oil, gas, and solution mining activities to the point of sale to the first commercial purchaser.

(12-a) Tangible personal property for use or consumption directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of

telecommunications services for sale or internet access services for sale or any combination thereof. Such tangible personal property exempt under this subdivision shall include, but not be limited to, tangible personal property used or consumed to upgrade systems to allow for the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of telecommunications services for sale or internet access services for sale or any combination thereof. As used in this paragraph, the term "telecommunications services" shall have the same meaning as defined in paragraph (g) of subdivision one of section one hundred eighty-six-e of this chapter.

* (12-b) (i) Machinery, equipment or apparatus used or consumed directly and predominantly to upgrade cable television systems to allow for the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of digital cable television service for sale, including parts with a useful life of one year or less and tools or supplies used in connection with such machinery, equipment or apparatus; and (ii) to the extent not otherwise exempt, equipment or apparatus, sold to an entity principally engaged in furnishing cable television service for sale, for use or consumption directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, retransmitting, switching or monitoring of switching of internet access service for sale, including parts with a useful life of one year or less and tools and supplies used in connection with such equipment or apparatus. As used in this paragraph, the term "digital cable television service" shall mean cable television service, as defined in subparagraph two of paragraph (b) of subdivision two of section one hundred eighty-six-e of this chapter, transmitted by the use of digital technology; and the term "internet access service" shall mean such term as defined in subdivision (v) of this section.

* NB Expired September 1, 2003

13. Tangible personal property sold through coin operated vending machines at ten cents or less, provided the retailer is primarily engaged in making such sales and maintains records satisfactory to the state tax commission.

(13-a) Tangible personal property sold through coin operated bulk

vending machines at fifty cents or less, provided the retailer is primarily engaged in making such sales and maintains records satisfactory to the commissioner. As used in this paragraph, "bulk vending machine" means a vending machine, containing unsorted merchandise, which, upon insertion of a coin, dispenses the same in approximately equal portions, at random and without selection by the customer.

(13-b) Temporary transportation devices sold through coin-operated equipment, provided the retailer is primarily engaged in making such sales and maintains records satisfactory to the commissioner. As used in this paragraph, "temporary transportation device" means an instrument of transport used for a limited period of time for the purpose of carrying luggage or merchandise a short distance within a facility of embarkation/disembarkation or a facility where such merchandise was purchased.

(14) Motor vehicles, as such term is defined in section one hundred twenty-five of the vehicle and traffic law, sold by a husband or wife to his or her spouse, or by a parent to his or her child, or by a child to his or her parent. Provided, however, this exemption shall not apply if the vendor is a dealer as defined in section four hundred fifteen of the vehicle and traffic law.

(14-a) Motor vehicles, as such term is defined in section one hundred twenty-five of the vehicle and traffic law, upon registration of such motor vehicle if such motor vehicle was purchased in another state by a person while he or she was in the military service of the United States upon the return of such person to this state, as long as he or she has proof of payment, whether made by the seller or purchaser, in another state of one or more of the following taxes on such motor vehicle: sales, use, excise, usage, or a highway use tax necessary to obtain title.

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in (i) erecting a structure or building (A) of an organization described in subdivision (a) of section eleven hundred sixteen or (B) used predominantly either in the production phase of farming or in a commercial horse boarding operation, or in both, or (ii) adding to, altering or improving real property, property or land (A) of such an organization or (B) used predominantly either in the production

phase of farming or in a commercial horse boarding operation, or in both, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

(16) Tangible personal property sold to a contractor, subcontractor or repairman for use in maintaining, servicing or repairing real property, property or land (i) of an organization described in subdivision (a) of section eleven hundred sixteen or (ii) used predominantly either in the production phase of farming or in a commercial horse boarding operation, or in both, as the terms real property, property or land are defined in the real property tax law; provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of such structure, building or real property.

(17) Tangible personal property sold by a contractor, subcontractor or repairman to a person other than an organization described in subdivision (a) of section eleven hundred sixteen, for whom he is adding to, or improving real property, property or land by a capital improvement, or for whom he is about to do any of the foregoing, if such tangible personal property is to become an integral component part of such structure, building or real property; provided, however, that if such sale is made pursuant to a contract irrevocably entered into before September first, nineteen hundred sixty-nine, no exemption shall exist under this paragraph.

(18) Tangible personal property sold by a person at his residence provided such person or any member of his household does not conduct a trade or business in which similar items are sold, and the receipts from such sales can reasonably be expected not to exceed six hundred dollars in a calendar year. If such person reasonably expects that his receipts from such sales will not exceed six hundred dollars in a calendar year, but such receipts do exceed such sum, the exemption provided for in this paragraph will apply but only to the first six hundred dollars of receipts in such calendar year. Provided, however, where a person sixteen years of age or older has engaged in such sales for three days in a calendar year, the exemption provided for in this paragraph shall not apply to subsequent sales in that calendar year. The exemption provided for in this paragraph shall also not apply to (A) sales at a

private residence conducted by an auctioneer, sheriff or other third party, (B) a sale held to liquidate an estate or (C) the sale of boats, snowmobiles or motor vehicles except such sales of motor vehicles within the exemptions of paragraph fourteen of subdivision (a) of this section.

(18-a) Tangible personal property manufactured and sold by a veteran, as defined in section twenty-two of the veterans' services law, for the benefit of a veteran's service organization, provided that such person or any member of his or her household does not conduct a trade or business in which similar items are sold, the first two thousand five hundred dollars of receipts from such sales in a calendar year.

(19) Cartons, containers, and wrapping and packaging materials and supplies, and components thereof for use and consumption by a vendor in packaging or packing tangible personal property for sale, and actually transferred by the vendor to the purchaser.

(19-a) Milk crates purchased by a dairy farmer or New York state licensed milk distributor and used exclusively and directly for the packaging and delivery of milk and milk products to customers.

(20) Paper, ink and any other tangible personal property purchased for use in the publication of a shopping paper, as such term is defined in and limited by subdivision (i) of this section, which is to become a physical component part of such paper.

(21) Commercial aircraft primarily engaged in intrastate, interstate or foreign commerce, machinery or equipment to be installed on such aircraft and property used by or purchased for the use of such aircraft for maintenance and repairs and flight simulators purchased by commercial airlines.

(21-a) General aviation aircraft, and machinery or equipment to be installed on such aircraft. For purposes of this subdivision, "general aviation aircraft" means an aircraft that is used in civil aviation, that is not a commercial aircraft as defined in paragraph seventeen of subdivision (b) of section eleven hundred one of this article, military aircraft, unmanned aerial vehicle or drone.

(22) The rental or lease of trucks, tractors or tractor-trailer combinations to an authorized carrier, pursuant to a written contractual agreement, for use in the transportation for hire of tangible personal property as augmenting equipment by such authorized carrier, provided that under such rental, lease or license to use, the owner of any such

vehicle or any employee of such owner operates such vehicle. For purposes of this paragraph, the term "authorized carrier" shall have the same meaning given that term in subpart-A of part ten hundred fifty-seven of title forty-nine of the code of federal regulations and in part eight hundred forty-five of title seventeen of the codes, rules and regulations of the state of New York, as the case may be, and the term "augmenting equipment" shall have the same meaning given that term in such part of such title of the codes, rules and regulations of the state of New York.

(23) Used mobile homes.

(24) Fishing vessels used directly and predominantly in the harvesting of fish for sale, and property used by or purchased for the use of such vessels for fuel, provisions, supplies, maintenance and repairs. For the purpose of this paragraph the term fishing vessel shall not include any vessel used predominantly for sport fishing purposes.

(25) Natural gas used for personal residence consumption by a land owner from, or provided in exchange for gas from, a natural gas well located on property owned by such land owner, such gas having been set aside for the property owner's use by lease.

(26) Tractors, trailers or semi-trailers, as such terms are defined in article one of the vehicle and traffic law, and property installed on such vehicles for their equipping, maintenance or repair, provided such vehicle is used in combination where the gross vehicle weight of such combination exceeds twenty-six thousand pounds.

(27) Precious metal bullion sold for investment, provided that (i) the retailer, if so required, is registered pursuant to section three hundred fifty-nine-e of the general business law and (ii) the receipt or consideration given or contracted to be given for such bullion depends only on the value of the metal content of such bullion. "Precious metal bullion" means bars, ingots or coins of gold, silver, platinum, palladium, rhodium, ruthenium or iridium, but shall not include bars, ingots or coins which have been manufactured, processed, assembled, fabricated or used for an industrial, professional, esthetic or artistic purpose. Precious metal bullion shall be deemed to be sold for investment when it is sold for more than one thousand dollars and the purchaser or user or agent of either of them holds it in the same form as when it was purchased and does not manufacture, process, assemble or

fabricate such bullion for its own use. For purposes of this paragraph, the receipt or consideration given or contracted to be given shall be deemed to depend only on the value of the metal content if, at the time of sale or purchase at retail, such receipt or consideration does not exceed (i) one hundred forty percent, with respect to silver coins, or (ii) one hundred twenty percent, with respect to gold coins weighing one-quarter of an ounce or less, or (iii) one hundred fifteen percent, with respect to other coins, of the greater of (A) the daily closing bullion cash price of such metal in the open market or (B) the coins' face value at prevailing rates of exchange, or (iv), with respect to bars and ingots, one hundred fifteen percent of such bullion cash price of such metal. Where there is no such closing price for such metal, the average of the bid and asked cash prices shall be substituted for such closing price.

(28) Computer software designed and developed by the author or creator to the specifications of a specific purchaser which is transferred directly or indirectly to a corporation which is a member of an affiliated group of corporations within the meaning of subparagraph six of paragraph (b) of subdivision seventeen of section two hundred eight of this chapter except for clauses (ii) and (iii) of such subparagraph that includes such purchaser, or to a partnership in which such purchaser and other members of such affiliated group have at least a fifty percent capital or profits interest (but only if the transfer is not in pursuance of a plan having as its principal purpose the avoidance or evasion of tax under this article), but in no case including computer software which is pre-written, as defined in paragraph six of subdivision (b) of section eleven hundred one of this article and available to be sold to customers in the ordinary course of the seller's business.

(29) a horse which is a racehorse registered with the jockey club, the United States trotting association or the national steeplechase and hunt association (or such a horse during the first twenty-four months of its life if it is eligible to be so registered) which is purchased or used with the intent that it shall be entered in an event on which pari-mutuel wagering is authorized by law, except that the exemption provided for under this paragraph shall not apply to any such horse which is considered to be at least four years old and has never raced in

an event on which pari-mutuel wagering is authorized by law. Provided, further, the purchaser of such a racehorse must give to the seller a certification containing such information as the commissioner of taxation and finance shall require, which shall include a statement to the effect that the purchaser intends to enter such horse in events on which pari-mutuel wagering is authorized by law. Such certification shall be retained by such seller, together with documentary proof of the age of such horse, for a three-year period. The provisions of this paragraph shall apply to all sales and uses of racehorses occurring on and after June first, nineteen hundred ninety-four.

(30) Clothing and footwear for which the receipt or consideration given or contracted to be given is less than one hundred ten dollars per article of clothing, per pair of shoes or other articles of footwear or per item used or consumed to make or repair such clothing and which becomes a physical component part of such clothing.

(30-a) Diapers intended for human use including, but not limited to: disposable, reusable, adult, and children's diapers.

* (31) Copies sold through coin operated photocopying machines at fifty cents or less. As used in this paragraph, "photocopying machine" means a vending machine which, upon insertion of a coin, copies a document for a purchaser.

* NB There are 2 par. (31)'s

* (31) Enhanced emissions inspection equipment, certified by the department of environmental conservation, pursuant to regulations promulgated by such department, for use in an enhanced emissions inspection and maintenance program as required by the federal clean air act of 1990, as amended in nineteen hundred ninety(42 U.S.C. 7401 et seq.) and the New York state clean air compliance act enacted by chapter 608 of the laws of 1993, where such equipment is purchased and used by an official inspection station licensed by the commissioner of motor vehicles under article five of the vehicle and traffic law and authorized to conduct the enhanced emission inspections required by such federal act.

* NB There are 2 par. (31)'s

(32) Omnibuses, as such term is defined in article one of the vehicle and traffic law, weighing at least twenty-six thousand pounds and measuring at least forty feet in length and parts, equipment and

lubricants purchased and used in their operation, provided such omnibuses are used to transport persons for hire by a carrier operating pursuant to a certificate of authority issued by the New York state commissioner of transportation or by an appropriate agency of the United States. Where receipts from the sale of or consideration given or contracted to be given for the purchase of an omnibus or other property has been exempted under this paragraph, such receipts or consideration shall not also qualify for the refund or credit described in subdivision (b) of section eleven hundred nineteen of this article; where any or all of the tax on receipts from the sale of or consideration given or contracted to be given for the purchase of an omnibus or other property has been refunded or credited under such subdivision (b), no part of such receipts or consideration shall be exempt under this paragraph. Nothing in this paragraph shall be construed to affect the refund or credit under subdivision (b) of such section eleven hundred nineteen with respect to the purchase or use of motor fuel or diesel motor fuel.

(33) Wine or wine product, beer or beer product, cider or cider product, liquor or liquor product, mead or mead product, and the kegs, cans, bottles, growlers, corks, caps, and labels used to package such alcoholic product, furnished by the official agent of a farm winery, winery, brewery, farm brewery, cider producer, farm cidery, distillery, farm distillery, mead producer, farm meadery, wholesaler, or importer at a tasting held in accordance with the alcoholic beverage control law to a customer or prospective customer who consumes such wine, beer, cider, liquor or mead at such tasting.

(34) Textbooks purchased by full and part time college students for their courses; provided, however, that upon purchase such a student shall present a valid student identification card, and such a textbook shall be required for a course being taken by such student at an institution of higher education. For purposes of this subdivision the term:

(i) "Textbooks" includes only those books specifically written, designed or produced for educational, instructional or pedagogical purposes.

(ii) "Institution of higher education" shall mean any institution of higher education, recognized and approved by the regents of the university of the state of New York or accredited by a nationally

recognized accrediting agency or association accepted as such by the regents of the university of the state of New York, which provides a course of study leading to the granting of a post-secondary degree, certificate or diploma.

(35) Computer system hardware used or consumed directly and predominantly in designing and developing computer software for sale or in providing the service, for sale, of designing and developing internet websites.

(36) Parts with a useful life of one year or less, tools and supplies for use or consumption directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting.

(37) (i) Machinery, equipment and other tangible personal property specified herein, sold to a person operating an internet data center located in this state for use in such a center, where such property: (A) will be located or installed in a facility or structure which is an internet data center and (B) is required for and directly related to the provision of internet website services for sale by the operator of the center. Such property shall include computer system hardware including servers and routers, computer software, storage racks and cages for computer equipment, interior fiber optic and copper cables, property required to maintain the appropriate climate controlled environment for the property in the internet data center such as air filtration and air conditioning equipment and vapor barriers, property related to fire control such as fire suppression equipment and alarms, power generators, power conditioners, property related to providing a secure environment such as protective barriers, property which when installed in such facility or structure will constitute raised flooring and other similar property. For purposes of this paragraph the operator of an internet data center is a person (A) operating a facility which consists of a data center specifically designed and constructed to provide a high security environment for the location of servers and similar equipment on which reside internet websites; and (B) providing at such facility the internet website services of: (I) uninterrupted internet access to its customers' web pages in a secure environment and (II) continuous internet traffic management for its customers' web pages.

(ii) For purposes of this paragraph, an operator of an internet data

center, primarily engaged in the sale from such center of internet access services exempt from tax under subdivision (v) of this section, is not providing internet website services for sale. Primarily engaged shall mean that more than fifty percent of the use of all the machinery, equipment and other specified property in any such center, which would otherwise be exempt under this paragraph, is for the rendition of such internet access services.

(iii) Receipts from the retail sale of the tangible personal property exempt pursuant to subparagraph (i) of this paragraph if purchased by an operator of an internet data center, shall be exempt when purchased by a contractor, subcontractor or repairman for use as described in such subparagraph (i), where such property is to become a capital improvement to real property.

(iv) In order to receive the exemption provided for under this paragraph or subdivision (y) of this section, the operator of the internet data center or the contractor, subcontractor or repairman shall furnish to the vendor of the exempt property or services a certificate in such form and containing such information as may be prescribed by the commissioner.

(38) (A) Machinery or equipment or other tangible personal property (including parts, tools and supplies) for use or consumption by a broadcaster directly and predominantly in the production (including post-production) of live or recorded programs which are used or consumed by a broadcaster predominantly for the purpose of broadcast over-the-air by such broadcaster or transmission through a cable television or direct broadcast satellite system by such broadcaster. Tangible personal property, which is described in the preceding sentence, and which is leased by a broadcaster to another person for that person's use or consumption directly and predominantly in the production (including post-production) of such live or recorded programs by such person, shall be deemed to be used or consumed by the lessor for purposes of applying the directly and predominantly requirement of this subparagraph.

(B) Machinery or equipment or other tangible personal property (including parts, tools and supplies) for use or consumption by a broadcaster directly and predominantly in the transmission of live or recorded programs over-the-air or through a cable television or direct broadcast satellite system by such broadcaster. Tangible personal

property, which is described in the preceding sentence, and which is leased by a broadcaster to another person for that person's use or consumption directly and predominantly in the transmission of such live or recorded programs by such person, shall be deemed to be used or consumed by the lessor for purposes of applying the directly and predominantly requirement of this subparagraph.

(C) For purposes of this paragraph: (i) the term "broadcaster" means a television or radio station licensed by the federal communications commission, a television or radio broadcast network or a cable television network. The term "television or radio broadcast network" means an organization which produces and/or purchases programs intended for transmission by affiliated television or radio stations licensed by the federal communications commission and which has distribution facilities or circuits available to such affiliated stations during all or some portion of one or more days during each week. The term "cable television network" means an organization which produces and/or purchases programs intended for transmission either by direct broadcast satellite systems or by cable systems pursuant to an affiliation or similar agreement and which has distribution facilities or circuits available to such direct broadcast satellite systems or such cable systems during all or some portion of one or more days during each week. For the purpose of subparagraph (B) of this paragraph, the term "broadcaster" shall not include cable system operators and direct broadcast satellite system operators. Provided, however, for the purpose of subparagraph (A) of this paragraph, such term shall also include a cable system operator or a direct broadcast satellite system operator solely with respect to machinery or equipment or other tangible personal property (including parts, tools and supplies) for use or consumption by it directly and predominantly in the production (including post-production) of live or recorded programs intended for transmission to its viewers over its system; (ii) the term "programs" means any performance, event, play, story or literary, musical, artistic or other work used for entertainment or educational purposes, including but not limited to news, news specials, sporting events, game shows, talk shows and commercials; and (iii) the term "recorded programs" means any program contained on any medium.

(39) Tangible personal property for use or consumption directly and

predominantly in the production, including editing, dubbing and mixing, of a film for sale regardless of the medium by means of which the film is conveyed to a purchaser. For purposes of this paragraph, the term "film" means feature films, documentary films, shorts, television films, television commercials and similar productions.

(40) Machinery or equipment for use or consumption directly and predominantly in the control, prevention, or abatement of pollution or contaminants from manufacturing or industrial facilities, to the extent such machinery or equipment is not otherwise exempt under paragraph twelve of this subdivision.

(41) machinery and equipment for use directly and predominantly in loading, unloading and handling cargo at a marine terminal facility located in a city with a population of one million or more which in two thousand three, handled more than three hundred fifty thousand twenty-foot equivalent units (TEUs). For the purpose of this section the term twenty-foot equivalent unit (TEU) is used to express the relative number of containers based on the equivalent length of a twenty-foot container.

* (42) E85, CNG or hydrogen, for use or consumption directly and exclusively in the engine of a motor vehicle and natural gas purchased and converted into CNG, for use or for sale for use or consumption directly and exclusively in the engine of a motor vehicle.

* NB Repealed September 1, 2031

(43) Ferry boats used directly and predominantly to provide ferry service for vehicles and passengers within a county or counties by a ferry company whose rates for that ferry service are regulated by the county or counties in which that service is provided under section one hundred thirty-one-g of the highway law and property used by or purchased for the use of those exempt ferry boats for fuel, provisions, supplies, maintenance and repairs.

(44) monuments as that term is defined in paragraph (f) of section fifteen hundred two of the not-for-profit corporation law, and tangible personal property that will become a physical component part of such monuments.

(45) 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 paragraph.

(46) Breast pump replacement parts and breast pump collection and storage supplies to an individual purchaser for home use. For purposes of this subdivision:

(A) "Breast pump replacement parts" shall mean items used in conjunction with a breast pump to collect milk expressed from a human breast and shall include, but not be limited to: breast shields and breast shield connectors; breast pump tubes and tubing adapters; breast pump valves and membranes; backflow protectors and backflow protector adapters; and bottles and bottle caps specific to the operation of the breast pump. "Breast pump replacement parts" does not include storage bags and infant feeding bottles that are not specifically designed for, or a component part of, a breast pump.

(B) "Breast pump collection and storage supplies" shall mean breast milk storage bags used to collect breast milk and to store collected breast milk until it is ready for consumption.

(b) (i) Telephony and telegraphy and telephone and telegraph service used by newspapers, electronic news services, radio broadcasters and television broadcasters in the collection or dissemination of news shall be exempt from the tax imposed under subdivision (b) of section eleven hundred five of this article if the charge for such services is a toll charge or a charge for mileage services, including the associated station terminal equipment.

(ii) Gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in research and development in the experimental or laboratory sense shall be exempt from the tax imposed under subdivision (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects.

(iii) (A) Electricity, steam, and refrigeration and electric, steam, and refrigeration services that are (1) metered and (2) generated or produced by a cogeneration facility owned or operated by a cooperative corporation containing at least fifteen hundred apartments, where such electricity, steam, or refrigeration and/or electric, steam, or refrigeration services are distributed to tenants and/or occupants of a cooperative corporation, shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

(B) For purposes of this paragraph, the term "cogeneration facility" means (1) a facility that produces electric energy and steam or other forms of useful energy (such as heat) that are used for industrial, commercial, or residential heating or cooling purposes that was in operation before January first, two thousand four, and is used to generate electricity and/or thermal energy produced by such facility when such electricity and/or thermal energy is supplied to and used by tenants and/or occupants of a cooperative corporation; or (2) a cogeneration facility, as defined in clause one of this subparagraph, that has been replaced by any other facility used to generate electricity and/or thermal energy produced by such facility when such electricity and/or thermal energy is supplied to and used by tenants and/or occupants of a cooperative corporation.

(C) For purposes of this paragraph, the term "cooperative corporation" means a corporation organized under the laws of New York, at least some of the stockholders of which are entitled, by reason of the stockholders' ownership interest of stock in the corporation, to occupy for dwelling purposes an apartment in a building owned by the corporation pursuant to a lease or occupancy agreement with the corporation.

(D) Fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service, used or consumed in the production of electricity, steam, and refrigeration and electric, steam, and refrigeration services for sale that are exempted under subparagraph (A) of this paragraph, shall not be entitled to the exemption provided by paragraph one of subdivision (c) of this section.

(c) (1) Fuel, gas, electricity, refrigeration and steam, and gas,

electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of tangible personal property, gas, electricity, refrigeration or steam, for sale, by manufacturing, processing, assembling, generating, refining, mining or extracting shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

(2) Fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both, shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

(d) Services otherwise taxable under paragraph (1), (2), (3), (7) or (8) of subdivision (c) of section eleven hundred five shall be exempt from tax under this article if the tangible property upon which the services were performed is delivered to the purchaser outside this state for use outside this state.

(e) Telephone and telegraph service paid for by inserting coins in coin operated telephones where the charge is twenty-five cents or less shall be exempt from the tax imposed under subdivision (b) of section eleven hundred five. For the purposes of this subdivision, each payment for overtime or additional usage beyond the initial usage period shall be deemed to be a separate charge.

(f) (1) Services rendered by a veterinarian licensed and registered as required by the education law which constitute the practice of veterinary medicine as defined in said law, including hospitalization for which no separate boarding charge is made, shall not be subject to tax under paragraph (3) of subdivision (c) of section eleven hundred five, but the exemption allowed by this subdivision shall not apply to other services provided by a veterinarian to pets and other animals, including, but not limited to, boarding, grooming and clipping. Articles of tangible personal property designed for use in some manner relating to domestic animals or poultry, when sold by such a veterinarian, shall not be subject to tax under subdivision (a) of section eleven hundred five or under section eleven hundred ten. However, the sale of any such

articles of tangible personal property to a veterinarian shall not be deemed a sale for resale within the meaning of paragraph (4) of subdivision (b) of section eleven hundred one and shall not be exempt from retail sales tax.

(2) Drugs or medicine sold to or used by a veterinarian for use in rendering services that are exempt pursuant to paragraph one of this subdivision to livestock or poultry used in the production for sale of tangible personal property by farming, or sold to a person qualifying for the exemption provided for in paragraph six of subdivision (a) of this section for use by such person on such livestock or poultry.

(g) Services otherwise taxable under paragraph (3) of subdivision (c) of section eleven hundred five shall be exempt from tax (1) if performed upon prosthetic aids, hearing aids, eyeglasses, artificial devices or medical equipment when receipts from the retail sale of such items are exempt from tax under the provisions of paragraphs three and four of subdivision (a) of this section or (2) if performed upon tractors, trailers or semi-trailers or on property installed on such vehicles for their equipping, maintenance or repair when receipts from the retail sale of such items are exempt from tax under the provisions of paragraph twenty-six of subdivision (a) of this section.

(h) Sales of tangible personal property by a railroad in reorganization to a profitable railroad, as such terms are defined in section one hundred two of the rail reorganization act of nineteen hundred seventy-three, as part of a plan of reorganization and restructuring under such rail reorganization act, shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten.

(i) (A) Receipts from the retail sale of a shopping paper to the publisher of such publication shall be exempt from the tax imposed by subdivision (a) of section eleven hundred five of this article and receipts from the sale of printing services performed in publishing such paper shall be exempt from the tax imposed by paragraph two of subdivision (c) of such section.

(B) For purposes of this subdivision, the term "shopping paper" shall mean those community publications distributed to the public, without consideration, for purposes of advertising and public information. To

qualify as a shopping paper for purposes of this subdivision, the publication must also:

(1) be distributed to the public on a community-wide basis,

(2) be published at stated intervals at least fifty times a year;

(3) having continuity as to title and general nature of content from issue to issue,

(4) contain in each issue news of general or community interest and community notices or editorial comment or articles by different authors;

(5) not constitute a book, either singly or when successive issues are put together;

(6) contain in each issue advertisements from numerous unrelated advertisers;

(7) be independently owned in that the publication is not owned by or under the control of the owners or lessees of a shopping center or a merchants association or similar entity or a business which sells property or services (other than advertising) and the advertisements in such publication are not predominantly for the property or services sold by such business; and

(8) meet the requirement set forth in paragraph (C) of this subdivision.

(C) The advertisements in such publication shall not exceed ninety percent of the printed area of all issues as averaged on an annual basis.

(D) The term "shopping paper" shall not include mail order and other catalogs, advertising fliers, travel brochures, house organs, theatre programs, telephone directories, shipping and restaurant guides, racing tip and form sheets, shopping center advertising sheets and similar publications.

* (j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel, except that the exemptions provided in paragraphs nine and forty-two of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and

eleven hundred ten of this article with respect to sales and uses of kero-jet fuel, CNG, hydrogen and E85, provided, however, the exemption allowed for E85 shall be subject to the additional requirements provided in section eleven hundred two of this article with respect to E85. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

* NB Effective until September 1, 2031

* (j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel, except that the exemption provided in paragraph nine of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

* NB Effective September 1, 2031

(k) Receipts from the sale of food eligible to be purchased with coupons issued under or pursuant to the federal food stamp act of nineteen hundred seventy-seven (7 U.S.C. § 2011 et seq.), as amended, from retail food stores and other participants, approved for participation under or pursuant to such act, shall be exempt from the sales and compensating use taxes imposed under this article, when such food is purchased with such coupons, but only so long as such act conditions state participation in the federal food stamp program on this state providing an exemption from state and local sales taxes for purchases of food made with coupons issued under or pursuant to such act and this state is participating in such program.

(l) Tangible personal property manufactured, processed or assembled and donated by the manufacturer, processor or assembler to an organization described in subdivision (a) of section eleven hundred sixteen shall be exempt from tax under this article provided that the manufacturer, processor or assembler offers the same kind of tangible personal property for sale in the regular course of business and provided further that the manufacturer, processor or assembler has not made any other use of the tangible personal property which is donated. Nothing in this subdivision shall be construed to allow a refund or credit of tax properly paid pursuant to this article.

(m) (1) The services of training and maintaining a racehorse to race in a race or race meeting held, maintained or conducted pursuant to the racing, pari-mutuel wagering and breeding law or a similar law of another state, when the services are rendered to the owner of the racehorse by a trainer of the racehorse, shall be exempt from tax under this article;

(2) Tangible personal property actually transferred by a trainer to the owner of the racehorse in conjunction with the rendering of a service that is exempt under paragraph one of this subdivision shall be exempt from tax under this article. However, the sale to a trainer of such a racehorse of any such tangible personal property or such services taxable under this article shall not be deemed a sale for resale within the meaning of paragraph four of subdivision (b) of section eleven hundred one and shall not be exempt from retail sales or compensating use tax;

(3) For purposes of this subdivision, a trainer means a horse trainer licensed under the racing, pari-mutuel wagering and breeding law or a similar law of another state, and a racehorse means a horse registered with the jockey club, the United States trotting association, American quarterhorse association or the National steeplechase and hunt association or a horse, during the first twenty-four months of its life, if it is eligible to be so registered.

(n) (1) Except as otherwise provided in this subdivision, promotional materials mailed, shipped or otherwise distributed from a point within the state, by or on behalf of vendors or other persons to their customers or prospective customers located outside this state for use outside this state shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

(2) Services otherwise taxable under paragraph one or two of subdivision (c) of section eleven hundred five of this article relating to mailing lists or activities directly in conjunction with mailing lists shall be exempt from tax under this article if such services are performed on or directly in conjunction with promotional materials exempt under paragraph one or four of this subdivision.

(3) Receipts from the retail sale of promotional materials, receipts from every sale, except for resale, of services described in paragraph one or two of subdivision (c) of section eleven hundred five to such promotional materials and consideration given or contracted to be given for either such materials or such services to such materials shall be exempt from tax under this article to the extent of the vendor's separately stated charge to the purchaser of such materials or services for the vendor's cost to ship or deliver such materials to the purchaser's customers or prospective customers by means of the United States postal service, paid by the vendor to such postal service to ship or deliver such materials, but only where the vendor separately states such charge to ship or deliver (not exceeding the vendor's United States postal service costs) in a written contract with the purchaser or on a written bill rendered to the purchaser.

(4) Notwithstanding any contrary provisions of paragraph one of this subdivision, promotional materials which are printed materials and

promotional materials upon which services described in paragraph two of subdivision (c) of section eleven hundred five have been directly performed shall be exempt from tax under this article where the purchaser of such promotional materials mails or ships such promotional materials, or causes such promotional materials to be mailed or shipped, to its customers or prospective customers, without charge to such customers or prospective customers, by means of a common carrier, United States postal service or like delivery service.

(5) Services otherwise taxable under paragraph two of subdivision (c) of section eleven hundred five performed on promotional materials exempt under paragraph four of this subdivision shall be exempt from tax under this article.

(6) Storing promotional materials exempt under paragraph four of this subdivision shall be exempt from tax under this article where the vendor of the storing service is also either the vendor of such exempt promotional materials or the vendor who rendered exempt services under paragraph two or five, or both, of this subdivision with respect to such exempt promotional materials and the purchaser of the storing service is the purchaser of such exempt promotional materials.

(7) Mechanicals, layouts, artwork, photographs, color separations and like property shall be exempt from tax under this article where such property is purchased, manufactured, processed or assembled by a person who furnishes such property to a printer and the printer uses such property directly and predominantly in the production of promotional materials exempt under paragraph four of this subdivision, or in performing services exempt under paragraph five of this subdivision, for sale by such printer to the person who furnished such property to the printer.

(8) Nothing in this subdivision shall be construed to exempt tangible personal property (i) purchased by a person (other than exempt promotional materials described in paragraph four of this subdivision) or (ii) manufactured, processed or assembled by the manufacturer, processor or assembler, who furnishes such property to the vendor of promotional materials exempt under paragraph one or four of this subdivision to be included as free gifts with such exempt promotional materials to be mailed or shipped to such purchaser's or such manufacturer's, processor's or assembler's customers or prospective

customers or who otherwise uses such property in this state, for example, by giving or donating the property as free gifts to another person, unless such tangible personal property is mailed, shipped or otherwise distributed from a point within this state to such customers or prospective customers located outside this state for use outside this state.

(o) Services otherwise taxable under subdivision (c) of section eleven hundred five or under section eleven hundred ten shall be exempt from tax under this article where performed on computer software of any nature; provided, however, that where such services are provided to a customer in conjunction with the sale of tangible personal property any charge for such services shall be exempt only when such charge is reasonable and separately stated on an invoice or other statement of the price given to the purchaser.

(q) Services otherwise taxable under paragraph three of subdivision (c) of section eleven hundred five or under section eleven hundred ten of this article, and tangible personal property purchased and used by the person who sells such services in performing such services, where such property becomes a physical component part of the property upon which the services are performed, shall be exempt from tax under this article where such services are performed on a barge which is not self propelled, has a cargo capacity of at least one thousand short tons, is used exclusively by the owner, lessee or operator of the barge to transport goods or other property in the conduct of such person's business and is primarily engaged in interstate or foreign commerce.

(r) Receipts from the sale of alarm call services designed specifically to respond to medical emergencies and the use of such services, otherwise taxable under paragraph eight of subdivision (c) of section eleven hundred five or under clause (C) of subdivision (a) of section eleven hundred ten of this article, shall be exempt from such taxes.

* (s) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred three of this article.

* NB There are 2 sub (s)'s

* (s) (1) The sale of any good or service necessary for the acquisition, sustenance or maintenance of a guide dog, a hearing dog or

a service dog, as defined in section one hundred eight of the agriculture and markets law, which is utilized by any person with a disability, shall be exempt from taxation pursuant to this article.

(2) For the purposes of this subdivision, "person with a disability" shall mean any person with a disability as that term is defined in subdivision twenty-one of section two hundred ninety-two of the executive law who uses a guide dog, hearing dog, or service dog to do work or perform tasks for such person, with respect to such disability and for which such dog is trained.

(3) The commissioner shall create and implement a means of identifying persons who make purchases which shall be exempt pursuant to this subdivision. Such persons shall include persons who have a dependent with a disability, and who makes purchases on behalf of such dependent. Only persons presenting such means of identification shall receive the exemption granted pursuant to this subdivision. Furthermore, the commissioner shall promulgate any rules and regulations necessary to implement the provisions of this subdivision.

* NB There are 2 sub (s)'s

(t) (1) Receipts of a car wash facility from every sale, except for resale, of the service of washing, waxing or vacuuming a motor vehicle or other tangible personal property and consideration given or contracted to be given for such service at such a facility, where (i) the motor vehicle or other tangible personal property is washed, waxed or vacuumed at such facility by means exclusively of coin-operated equipment at such facility of the vendor providing the service; and (ii) neither the vendor nor any employee of the vendor assists in washing, waxing or vacuuming the motor vehicle or other tangible personal property; and (iii) the purchaser or user of the service washes, waxes or vacuums such person's motor vehicle or other tangible personal property at such a facility, or (iv) the motor vehicle or other tangible personal property is washed, waxed or vacuumed by automated equipment without assistance by the purchaser or user of the service, shall be exempt from tax under this article, to the extent of the amount of money or value, in money, of tokens deposited in such coin-operated equipment by the purchaser of the service.

(2) Except to the extent exempt under paragraph one of this subdivision receipts from every sale, except for resale, of the service

of vacuuming a motor vehicle or other tangible personal property and consideration given or contracted to be given for such service, where the purchaser or user of the service vacuums such person's motor vehicle or other tangible personal property at the facility where the vacuum equipment is located, by means exclusively of coin-operated equipment and neither the vendor operating the facility nor any employee of the vendor assists the purchaser in vacuuming the vehicle or other tangible personal property, shall be exempt from tax under this article, to the extent of the amount of money or value, in money, of tokens deposited in such coin-operated equipment by the purchaser of the service.

(3) For purposes of this subdivision, the term "coin-operated" includes coin-operated, currency-operated or token-operated and the term "motor vehicle" shall mean a motor vehicle as defined in subdivision (f) of section eleven hundred thirty-two of this article.

(u) Receipts from every sale of the services described in paragraph three of subdivision (c) of section eleven hundred five of this article to omnibuses, parts, equipment and lubricants exempt from tax under paragraph thirty-two of subdivision (a) of this section shall be exempt from tax under this article. Where receipts from the sale of or consideration given or contracted to be given for the purchase of a service have been exempted under this subdivision, such receipts or consideration shall not also qualify for the refund or credit described in subdivision (b) of section eleven hundred nineteen of this article; where any or all of the tax on receipts from the sale of or consideration given or contracted to be given for the purchase of a service has been refunded or credited under such subdivision (b), no part of such receipts or consideration shall be exempt under this subdivision.

(v) Receipts from the sale of Internet access service, including start-up charges, and the use of such service, shall be exempt from the taxes imposed under this article. For purposes of this subdivision, the term "Internet access service" shall mean the service of providing connection to the Internet, but only where such service entails the routing of Internet traffic by means of accepted Internet protocols. The provision of communication or navigation software, an e-mail address, e-mail software, news headlines, space for a website and website services, or other such services, in conjunction with the provision of

such connection to the Internet, where such services are merely incidental to the provision of such connection, shall be considered to be part of the provision of Internet access service.

* (w) Receipts from the sale of gas or electricity or gas or electric service of whatever nature and consideration given or contracted to be given for, or for the use of, gas or electricity or gas or electric service of whatever nature purchased for use or consumption directly and exclusively to provide gas or electric service of whatever nature consisting of operating a gas pipeline or gas distribution line or an electric transmission or distribution line and ensuring the necessary working pressure in an underground gas storage facility shall be exempt from sales and compensating use taxes imposed by this article. Such exempt gas or electricity or gas or electric service of whatever nature shall include, but shall not be limited to, such gas or electricity or gas or electric service of whatever nature used or consumed directly and exclusively to (1) ensure necessary working pressure in a gas pipeline used to transport, transmit or distribute gas, (2) operate compressors used to transport, transmit or distribute gas through such a gas pipeline or distribution line or used to ensure necessary working pressure in such a storage facility, (3) operate heaters to prevent gas in such a pipeline or distribution line from freezing, (4) operate equipment which removes impurities and moisture from gas in such a pipeline or distribution line, (5) operate substations and equipment related to electric transmission and distribution lines such as transformers, capacitors, meters, switches, communication devices and heating and cooling equipment, and (6) ensure the reliability of electricity or electric service transmitted or distributed through such lines, for example, by operating reserve capacity machinery and equipment.

* NB There are 2 sub. (w)'s

* (w) Receipts from sales by a senior citizen independent housing community of food or drink (other than beer, wine or other alcoholic beverages) for consumption on the premises of such community (1) to its residents and (2) to guests of such residents, provided that the dining facility where food and drink is served to such residents and their guests is not open to the public, shall be exempt from the tax imposed by subdivision (d) of section eleven hundred five of this article,

provided that any such food or drink shall be exempt only where it is served at the dining facility at such community or served to the residents or the residents' guests in the residents' rooms. For the purposes of this subdivision, the term "senior citizen" means a person at least fifty-five years of age and the term "senior citizen independent housing community" means a residential facility, with or without additional facilities such as recreational facilities, which is designed for senior citizens, the residents of which are senior citizens, spouses of such senior citizens or any other person, not necessarily related, who has resided with a senior citizen for at least six months and persons hired to provide live-in, long term care to a resident and who are actually providing such care to such a resident for compensation. Nothing in this subdivision shall be construed to apply to food or drink sold or served at a hotel, motel, rooming house or other similar establishment or at a restaurant, tavern or other similar establishment. The exemption provided by this subdivision shall not be construed to apply to food or drink sold through vending machines.

* NB There are 2 sub. (w)'s

(x) Receipts from every sale of, and consideration given or contracted to be given for, or for the use of, the following tangible personal property and services shall be exempt from the taxes imposed by this article:

(1) Tangible personal property for use or consumption directly and predominantly in production of live dramatic or musical arts performances in a theater or other similar place of assembly (but not including a roof garden, cabaret or other similar place), with a seating capacity of one hundred or more chairs that are rigidly anchored to the construction or fixed in place so as to prevent movement in any direction, but only where it can be shown at the time such tangible personal property is purchased that such performances are to be presented to the public in such theater or other similar place on a regular basis of at least five performances per week for a period of at least two consecutive weeks, the content of each such performance shall be the same and a charge is or is to be made for admission to the place where such performances occur. For purposes of this subdivision, the term "place of assembly" shall mean a place of assembly with a stage in which scenery and scenic elements are used, as described in section

27-232 and subdivision (a) of section 27-255 of the administrative code of the city of New York (as such section and subdivision exist on January first, nineteen hundred ninety-eight), and for which an approved seating plan is required to be kept, as described in section 27-528 of the administrative code of the city of New York (as such section exists on January first, nineteen hundred ninety-eight), whether or not such theater or other similar place is located in such city. Nothing in this paragraph shall be construed to exempt tangible personal property which is permanently affixed to, or becomes an integral component part of, a structure, building, or real property.

(2) Services described in paragraph two or three of subdivision (c) of section eleven hundred five of this article when rendered with respect to property exempt under paragraph one of this subdivision.

(y) Services otherwise taxable under paragraph three, five or eight of subdivision (c) of section eleven hundred five or under section eleven hundred ten of this article shall be exempt from any tax imposed pursuant to such provisions where such services are rendered directly to or in relation to the property exempt from tax pursuant to paragraph thirty-seven of subdivision (a) of this section, provided however where any such services are rendered to property or in relation to property which was in part not exempt under such paragraph thirty-seven, the commissioner shall provide for a method of allocation to exempt a portion of such services.

(aa)(1) The following services shall be exempt when rendered to a broadcaster in connection with its broadcasting business:

(i) The services described in paragraph two of subdivision (c) of section eleven hundred five of this article and the services of editing, dubbing, and mixing when performed in connection with the production, post-production or transmission of live or recorded programs described in subparagraph (A) of paragraph thirty-eight of subdivision (a) of this section.

(ii) The services described in paragraph three of subdivision (c) of section eleven hundred five of this article when performed on the tangible personal property described in paragraph thirty-eight of subdivision (a) of this section.

(iii) The services described in paragraph five of subdivision (c) of section eleven hundred five of this article when performed on property

described in paragraph thirty-eight of subdivision (a) of this section which subsequent to its installation has become an addition or capital improvement to real property, property or land, as such terms are defined in the real property tax law.

(2) For purposes of this subdivision: the terms "broadcaster", "programs", and "recorded programs" shall have the same meaning as that ascribed to those terms in subparagraph (C) of paragraph thirty-eight of subdivision (a) of this section.

(bb) 1. Receipts from the sale of services described in paragraph two or three of subdivision (c) of section eleven hundred five of this article, and consideration given or contracted to be given for, or for the use of, such services, shall be exempt from tax under this article when rendered with respect to property exempt under paragraph thirty-nine of subdivision (a) of this section.

2. Fuel, gas, electricity, refrigeration and steam, and gas, electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of a film for sale, as described in paragraph thirty-nine of subdivision (a) of this section, shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

(cc) Notwithstanding any other provision of law to the contrary, receipts from the sale of mobile telecommunications service by a home service provider shall be exempt from the taxes imposed by subparagraph (B) of paragraph one and paragraph two of subdivision (b) of section eleven hundred five of this article if the mobile telecommunications customer's place of primary use is within a taxing jurisdiction outside this state.

(dd) (1) Services otherwise taxable under paragraph three of subdivision (c) of section eleven hundred five or under section eleven hundred ten of this article, and tangible personal property purchased and used by the person who sells such services in performing such services, where such property becomes a physical component part of the property upon which the services are performed or where such property is a lubricant applied to aircraft, shall be exempt from tax under this article where such services are performed on aircraft.

(2) The service of storing an aircraft provided by a person who sells a service exempt under paragraph one of this subdivision, when such storing is rendered in conjunction with, and during the rendering of, such service to such aircraft, shall be exempt from the tax imposed under paragraph four of subdivision (c) of section eleven hundred five of this article.

* (ee) The following shall be exempt from tax under this article: (1) Receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, residential solar energy systems equipment and the service of installing such systems. For the purposes of this subdivision, "residential solar energy systems equipment" shall mean an arrangement or combination of components installed in a residence that utilizes solar radiation to produce energy designed to provide heating, cooling, hot water and/or electricity. Such arrangement or components shall not include equipment that is part of a non-solar energy system or which uses any sort of recreational facility or equipment as a storage medium.

(2) Receipts from the sale of electricity by a person primarily engaged in the sale of solar energy system equipment and/or electricity generated by such equipment pursuant to a written agreement under which such electricity is generated by residential solar energy system equipment that is: (A) owned by a person other than the purchaser of such electricity; (B) installed on residential property of the purchaser of such electricity; and (C) used to provide heating, cooling, hot water or electricity to such property.

* NB There are 2 sb (ee)'s

* (ee) (1) Tangible personal property purchased by a tenant for use directly and exclusively to furnish and equip the tenant's leased premises for use as commercial office space shall be exempt from the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. Provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of the building in which such leased premises are located.

(2) Tangible personal property purchased by a tenant or landlord for use directly and exclusively in adding to, altering or improving the tenant's leased premises for use as commercial office space shall be

exempt from the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. Provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of the building in which such leased premises are located.

(3) Tangible personal property sold to a contractor, subcontractor or repairperson for use directly and exclusively in adding to, altering or improving a tenant's leased premises for use as commercial office space shall be exempt from the taxes imposed by sections eleven hundred five and eleven hundred ten of this article. Provided, however, no exemption shall exist under this paragraph unless such tangible personal property is to become an integral component part of the building in which such leased premises are located.

(4) The service of installing property exempt under paragraph one or two of this subdivision shall be exempt from the tax imposed by paragraph three of subdivision (c) of section eleven hundred five of this article.

(5) The exemptions in this subdivision shall apply only to purchases or sales made, uses occurring and services rendered during the period commencing on the first day of the tenant's lease term and ending one year later, provided that any such property must be delivered to the tenant's leased premises for use at or in such premises, and such services must be rendered there in full, no later than ninety days after the end of such year; and provided, further, that, with respect to leased or rented tangible personal property, such exemptions shall apply only to lease or rental payments required to be paid during such year. Nothing in this subdivision shall be construed to exempt tangible personal property for use in erecting or adding to a structure or building of a landlord.

(6) When applying the exemptions in paragraphs one and two of this subdivision with respect to leased premises located in the World Trade Center site, the world financial center and the Battery Park city area, such paragraphs shall be read without regard to the requirement set forth in the last sentence of each such paragraph that tangible personal property is to become an integral component part of the building in which such leased premises are located.

(7) For purposes of this subdivision:

(A) "Tenant" means a person who, as lessee, enters into a space lease with a landlord for a term of ten years or more commencing on or after September first, two thousand five, but not later than, in the case of a space lease with respect to leased premises located in eligible areas as defined in clause (i) of subparagraph (D) of this paragraph, September first, two thousand twenty-seven and, in the case of a space lease with respect to leased premises located in eligible areas as defined in clause (ii) of subparagraph (D) of this paragraph not later than September first, two thousand twenty-nine, of premises for use as commercial office space in buildings located or to be located in the eligible areas. A person who currently occupies premises for use as commercial office space under an existing lease in a building in the eligible areas shall not be eligible for exemption under this subdivision unless such existing lease, in the case of a space lease with respect to leased premises located in eligible areas as defined in clause (i) of subparagraph (D) of this paragraph expires according to its terms before September first, two thousand twenty-seven or such existing lease, in the case of a space lease with respect to leased premises located in eligible areas as defined in clause (ii) of subparagraph (D) of this paragraph and such person enters into a space lease, for a term of ten years or more commencing on or after September first, two thousand five, of premises for use as commercial office space in a building located or to be located in the eligible areas, provided that such space lease with respect to leased premises located in eligible areas as defined in clause (i) of subparagraph (D) of this paragraph commences no later than September first, two thousand twenty-seven, and provided that such space lease with respect to leased premises located in eligible areas as defined in clause (ii) of subparagraph (D) of this paragraph commences no later than September first, two thousand twenty-nine and provided, further, that such space lease shall expire no earlier than ten years after the expiration of the original lease.

(B) "Leased premises" means the premises within a building to be used as commercial office space under a lease described in subparagraph (A) of this paragraph, excluding any common areas and any other area outside such office space.

(C) "Landlord" means the person, unrelated by ownership to a tenant,

who leases leased premises to that tenant.

(D) "Eligible areas" mean: **(i) the area in the borough of Manhattan bounded by Murray street on the north starting at the intersection of West street and Murray street; running easterly along the center line of Murray street, connecting through City Hall Park with the center line of Frankfort street and running easterly along the center lines of Frankfort and Dover streets to the intersection of Dover street and South street; running southerly along the center line of South street to Peter Minuit Plaza; connecting through Peter Minuit Plaza to the center line of State street and running northwesterly along the center line of State street to the intersection of State street and Battery Place; running westerly along the center line of Battery Place to the intersection of Battery Place and West street; and running northerly along the center line of West street to the intersection of West street and Murray street. In addition, "eligible area" shall include the "Battery Park project area" as defined in section nineteen hundred seventy-two of the public authorities law, including the world financial center. Any tax lot that is partly located inside the eligible area shall be deemed to be entirely located inside such area, and

** NB Repealed December 1, 2028

(ii) the World Trade Center site, the World financial center and the Battery Park city area as defined as follows:

(a) "World Trade Center site" means the area of the former complex of seven buildings (known as numbers one through seven world trade center) around a central plaza, near the south end of the county of New York in the downtown financial district, which were destroyed or damaged beyond repair in the attacks of September eleventh, two thousand one.

(b) "World financial center" means the complex of buildings known as numbers one through four world financial center, in an area in the county of New York bordered by West street, the Hudson River, and Vesey and Liberty streets.

(c) "Battery Park city area" means the "Battery Park project area" as defined in section nineteen hundred seventy-two of the public authorities law, including the world financial center.

(8) Notwithstanding any provision of law to the contrary, this subdivision shall also apply to the taxes imposed by section eleven hundred seven and the taxes imposed by section eleven hundred nine of

this article, but shall not apply to the taxes imposed by section eleven hundred eight of this article or pursuant to the authority of article twenty-nine of this chapter other than taxes imposed by a city of a million or more pursuant to the authority of subdivision (a) of section twelve hundred ten of such article twenty-nine.

* NB Repealed December 1, 2030

* NB There are 2 sb (ee)'s

(ff) Receipts from retail sales of tangible personal property by any gift shop located in a veteran's home described in title thirty-eight of the United States Code shall be exempt from the taxes imposed by this article.

(gg) (1) Receipts from the sale of an electronic news service and consideration given or contracted to be given for, or for the use of, an electronic news service shall be exempt from the taxes imposed by paragraph one or nine of subdivision (c) of section eleven hundred five of this article and clause (C) of subdivision (a) of section eleven hundred ten of this article if the receipts from the sale of, or the consideration given for, or for the use of, the electronic news service does not exceed the cap amount as defined in subparagraph (ii) of paragraph thirty-seven of subdivision (b) of section eleven hundred one of this article. If the subscription period of the electronic news service is other than a year, the cap amount shall be adjusted proportionately in determining whether the subscription price exceeds the cap amount. If the contract for the sale of the electronic news service grants more than one person the right to view the electronic news service, the receipts from the sale of, or the consideration given for, or for the use of, the service will be deemed not to exceed the cap amount only if the listed selling price for an individual subscription on the day the contract commences does not exceed the cap amount.

(2) Receipts from the sale of an electronic periodical and consideration given, or contracted to be given for, or for the use of, an electronic periodical shall be exempt from the taxes imposed by paragraph one or nine of subdivision (c) of section eleven hundred five and clause (C) of subdivision (a) of section eleven hundred ten of this article.

(3) If an electronic periodical is sold together with any other components that are taxable under this article (other than an electronic

news service) for a single price, the exemption in paragraph two of this subdivision shall not apply to the receipts from the sale of, or consideration given, or contracted to be give for, or for the use of, the electronic periodical and such other components unless the vendor sells such electronic periodical and such other components separately in the regular course of business. If the requirement in the preceding sentence is satisfied, then the exemption will apply to an amount equal to the bundled price multiplied by a fraction, the numerator of which is the price of the electronic periodical when sold separately and the denominator of which is the sum of the price of the electronic periodical when sold separately and the price of the other components of the transaction when sold separately.

(4) If an electronic news service is sold together with other components for a single price, the exemption in paragraph one of this subdivision shall not apply to the receipts from the sale of, or consideration given, or contracted to be given, for, or for the use of, the electronic news service and the other components in the transaction unless one of the following exceptions applies and only to the extent indicated:

(i) The provider of the electronic news service does not separately sell the electronic news service in the regular course of business, the other components are not taxable under this article, and the bundled price is less than the cap amount, in which case the exemption applies to the full bundled price; or

(ii) The provider of the electronic news service sells the electronic news service and each of the other components of the transaction separately in the regular course of business, whether or not the components are taxable under this article, and the separate price of the electronic news service does not exceed the cap amount. If the conditions in this subparagraph are met, the exemption provided by paragraph one of this subdivision will apply only to an amount equal to the bundled price multiplied by a fraction, the numerator of which is the price of the electronic news service when sold separately in the regular course of business, and the denominator of which is the sum of the price of the electronic news service when sold separately in the regular course of business and the prices of the other components when sold separately in the regular course of business; provided, however,

that in no case shall the exempt amount be greater than the amount of the charge for the electronic news service when sold separately in the regular course of business.

(5) For the purposes of this subdivision "bundled price" means the price at which an electronic news service or an electronic periodical is sold together with any other components for one price; and "component" means any property, service, or other item of whatever nature that is sold together with an electronic news service or electronic periodical for one price.

(6) Nothing in this subdivision shall exempt, or be construed to exempt, any separate charge by the vendor of an electronic news service or electronic periodical for other information services, or any other property or service subject to tax under this article, that does not constitute an electronic news service or electronic periodical.

(hh) Receipts from the sale of transportation service consisting of a HAIL vehicle trip, as the term "HAIL vehicle trip" is defined in article twenty-nine-A of this chapter, shall be exempt from the tax imposed by paragraph ten of subdivision (c) of section eleven hundred five of this article, if such trip originates in a city of a million or more and terminates anywhere within the territorial boundaries of the metropolitan commuter transportation district and is subject to the tax on HAIL vehicle trips imposed by such article twenty-nine-A.

* (ii) The following shall be exempt from tax under this article: (1) Receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, commercial solar energy systems equipment and the service of installing such systems. For the purposes of this subdivision, "commercial solar energy systems equipment" shall mean an arrangement or combination of components installed upon non-residential premises that utilize solar radiation to produce energy designed to provide heating, cooling, hot water and/or electricity. Such arrangement or components shall not include equipment that is part of a non-solar energy system.

(2) Receipts from the sale of electricity by a person primarily engaged in the sale of solar energy system equipment and/or electricity generated by such equipment pursuant to a written agreement under which the electricity is generated by commercial solar energy system equipment that is: (A) owned by a person other than the purchaser of such

electricity; (B) installed on the non-residential premises of the purchaser of such electricity; and (C) used to provide heating, cooling, hot water or electricity to such premises.

* NB There are 2 sb (ii)'s

* (ii) Receipts from sales of and fees associated with water and sewer service line protection programs sold to owners of residential property shall be exempt from the taxes imposed by this article.

* NB There are 2 sb (ii)'s

* (jj) Notwithstanding any other provision of this article: (1) Receipts in excess of two hundred thirty thousand dollars from every sale of, and consideration given or contracted to be given for, or for the use of, a vessel shall be exempt from the taxes imposed by this article. For purposes of this subdivision, "vessel" shall have the same meaning as such term is defined in section twenty-two hundred fifty of the vehicle and traffic law and any outboard motor or trailer, as defined in section one hundred fifty-six of such law, when sold in conjunction with such vessel.

(2) For purposes of subdivision (b) of section eleven hundred eleven of this article, the purchase price, current market value, or fair rental value, as the case may be, of a vessel purchased by a resident of New York state outside of this state for use outside of this state that subsequently becomes subject to the compensating use tax imposed under this article shall be deemed not to exceed two hundred thirty thousand dollars.

(3) For purposes of subdivision (i) of section eleven hundred eleven of this article, receipts from, or consideration given or contracted to be given for, the lease of a vessel that is subject to such subdivision (i) in excess of two hundred thirty thousand dollars shall be exempt from the calculation of tax due under such subdivision (i).

(4) For purposes of paragraph one of subdivision (q) of section eleven hundred eleven of this article, the limitations on exclusions from the definition of retail sale in paragraph one of such subdivision shall apply only to the first two hundred thirty thousand dollars of receipts from every sale of, or consideration given or contracted to be given for, or for the use of, a vessel.

(5) For purposes of paragraph two of subdivision (q) of section eleven hundred eleven of this article, the purchase price or market value, as

the case may be, of a vessel subject to tax under paragraph two of such subdivision (q) shall be deemed not to exceed two hundred thirty thousand dollars.

(6) For purposes of subdivision two of section eleven hundred eighteen of this article, the limitation on the exclusion from compensating use tax in such subdivision two with respect to qualified property, as defined in such subdivision, shall apply only to the first two hundred thirty thousand dollars of consideration given or contracted to be given for, or for the use of, a vessel.

(7) For purposes of paragraph (a) of subdivision seven of section eleven hundred eighteen of this article, the refund or credit allowable under paragraph (a) of such subdivision seven shall be computed only with regard to tax legally due and paid to another state on the first two hundred thirty thousand dollars of the purchase price.

(8) Except as otherwise provided herein, this subdivision shall not be deemed to limit any other exemption, exclusion or credit in this article relating to a vessel.

* NB There are 2 sb (jj)'s

* (jj) Tangible personal property or services otherwise taxable under this article sold to a related person shall not be subject to the taxes imposed by section eleven hundred five of this article or the compensating use tax imposed under section eleven hundred ten of this article where the purchaser can show that the following conditions have been met to the extent they are applicable: (1)(i) the vendor and the purchaser are referenced as either a "covered company" as described in section 243.2(f) or a "material entity" as described in section 243.2(l) of the Code of Federal Regulations in a resolution plan that has been submitted to an agency of the United States for the purpose of satisfying subparagraph 1 of paragraph (d) of section one hundred sixty-five of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") or any successor law, or (ii) the vendor and the purchaser are separate legal entities pursuant to a divestiture directed pursuant to subparagraph 5 of paragraph (d) of section one hundred sixty-five of such act or any successor law; (2) the sale would not have occurred between such related entities were it not for such resolution plan or divestiture; and (3) in acquiring such property or services, the vendor did not claim an exemption from the tax imposed by this state or

another state based on the vendor's intent to resell such services or property. A person is related to another person for purposes of this subdivision if the person bears a relationship to such person described in section two hundred sixty-seven of the internal revenue code. The exemption provided by this subdivision shall not apply to sales made, services rendered, or uses occurring after June thirtieth, two thousand twenty-five, except with respect to sales made, services rendered, or uses occurring pursuant to binding contracts entered into on or before such date; but in no case shall such exemption apply after June thirtieth, two thousand twenty-eight.

* NB There are 2 sb (jj)'s

* (kk) Rent paid by a room remarketer to an operator that is not a room remarketer for an occupancy that the room remarketer intends to provide to an occupant for rent shall be exempt from the hotel unit fee imposed by section eleven hundred four of this article and the tax imposed by subdivision (e) of section eleven hundred five of this article, provided that such room remarketer furnishes such operator a certificate in such form and containing such information as may be prescribed by the commissioner. The exemption certificate provided for by this subdivision shall be administered by the commissioner in conformity with the rules for exemption or resale certificates in subparagraph (i) of paragraph one of subdivision (c) of section eleven hundred thirty-two of this article.

* NB There are 2 sb (kk)'s

* (kk) The following shall be exempt from tax under this article: (1) Receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, commercial fuel cell electricity generating systems equipment and the service of installing and maintaining such systems. For the purposes of this subdivision, "fuel cell electricity generating systems equipment" shall mean an electric generating arrangement or combination of components installed upon non-residential premises that utilize solid oxide, molten carbonate, proton exchange membrane or phosphoric acid fuel cell, or for the purposes of this section only, linear generator.

(2) Receipts from the sale of hydrogen gas or electricity by a person primarily engaged in the sale of fuel cell electricity generating system equipment and/or electricity generated by such equipment pursuant to a

written agreement under which the electricity is generated by commercial fuel cell electricity generating system equipment that is: (A) owned by a person other than the purchaser of such electricity; (B) installed on the non-residential premises of the purchaser of such electricity; (C) placed in service; and (D) used to provide heating, cooling, hot water or electricity to such premises.

* NB There are 2 sb (kk)'s

* (ll) The following shall be exempt from tax under this article: (1) Receipts from the retail sale of, and consideration given or contracted to be given for, or for the use of, residential energy storage systems equipment and the service of installing such systems. For the purposes of this subdivision, "residential energy storage systems equipment" shall mean an arrangement or combination of components installed in a residence that stores electricity for use at a later time to provide heating, cooling, hot water and/or electricity.

(2) Receipts from the sale of electricity by a person primarily engaged in the sale of energy storage system equipment and/or electricity generated by such equipment pursuant to a written agreement under which such electricity is generated by residential energy system storage equipment that is: (A) owned by a person other than the purchaser of such electricity; (B) installed on residential property of the purchaser of such electricity; and (C) used to provide heating, cooling, hot water or electricity.

* NB Repealed June 1, 2028