



# Important Notice

N-93-20

(8/93)

## Increase in Tax Rate Applicable to Entertainment and Information Services Provided by Means of Telephony or Telegraphy

Effective September 1, 1993, there will be an additional state sales tax at the rate of 5% added to the existing 4% state sales tax imposed on receipts from the services of furnishing or providing an entertainment or information service which is furnished, provided or delivered by means of telephony or telegraphy or telephone or telegraph service of whatever nature (see section 1105(c)(9) of the Tax Law). The treatment of these services for sales tax purposes remains identical to the existing treatment except as to rate. Thus, the only change is that the state sales tax rate on such services has been increased from 4% to 9%. The Municipal Assistance Corporation sales taxes (section 1107 of the Tax Law), the Metropolitan Commuter Transportation District sales taxes (section 1109 of the Tax Law) and local sales taxes imposed pursuant to the authority of Article 29 of the Tax Law are to be added to the aforementioned 9% state sales tax rate.

*Example: A person residing in New York State subscribes to an entertainment service that is provided via telephony. The entertainment service recipient receives the service on a monthly basis and is charged for the service directly on the bill for telephone service. Prior to September 1, 1993, both the telephone service and entertainment service were subject to an 8% sales tax (4% state, 4% local). However, any entertainment service provided after September 1, 1993, will be subject to a 13% sales tax (9% state, 4% local). There is no change in the rate of tax imposed on the telephone service, which remains at 8%.*

The affected services contracted for or paid for prior to September 1, 1993, will be subject to the additional state sales tax if they are rendered on or after September 1, 1993.

A new line and reporting code has been added to the sales and use tax return in order to report the additional state sales tax imposed on such services.

Entertainment and information services provided or delivered by means of telephony or telegraphy or telephone or telegraph service include all such services delivered by such means. These services are taxable, and subject to tax at the higher state sales tax rate and the applicable local tax rate, whether provided through 500, 700, 800 or 900 telephone numbers, as well as those delivered by local exchange, private telephone line, cable or channel. It should be kept in mind that the services subject to tax at the increased rate are distinct from telephone or telegraph services subject to tax under section 1105(b) of the Tax Law.

Collecting, compiling or analyzing information of any kind and reporting such information to other persons by means of telephony or telegraphy or telephone or telegraph service constitutes the rendering of an information service subject to tax at the increased state tax rate as well as the applicable local sales tax, unless otherwise exempt.

Information services that are currently subject to tax when

furnished in written form by printed, mimeographed or multigraphed matter or by duplicating written or printed matter, such as tapes, disc, electronic readouts or displays, continue to be subject to tax at the 4% state tax rate and the applicable local tax (see section 1105(c)(1) of the Tax Law). The higher sales tax rate applies to all charges for the service by the vendor to the customer which are subject to tax pursuant to section 1105(c)(9) of the Tax Law.

A fee for subscribing to a taxable entertainment or information service (taxable under section 1105(c)(9) of the Tax Law) that is billed on a monthly, annual or other basis is taxable at the new rate. Membership or other fees entitling the subscriber to receive, by means of telephony or telegraphy, a certain number of free reports or services, or reduced charges on reports or services, are also taxable at the new state tax rate. No tax is due if the vendor makes no charge for the services.

Tax is to be separately stated on the recipient's telephone bill, credit card charge receipt or any other bill issued for such services.

The increased state tax rate does not apply to any receipts from the sale of information services that are not subject to tax under section 1105(c)(1) of the Tax Law. These include an information service which is personal or individual in nature and is not or may not be substantially incorporated into reports furnished to other persons by the person who collected, compiled or analyzed the information. Examples of such services include a personalized management report delivered orally over the telephone, or an insurance damage appraisal conveyed over the telephone. Also, purchases of information services by newspapers or radio and television broadcasters that are used in the collection and dissemination of news are exempt from sales tax.

In addition, the increased state sales tax rate does not apply to charges made to organizations and entities (such as government agencies, exempt organizations, etc.) that are exempt from the general sales and use tax in accordance with section 1116(a) of the Tax Law. Documentation which substantiates exemption from the state and local sales tax for such organizations will likewise serve to exempt such organizations from the additional 5% state sales tax.

When exempt entertainment services or exempt information services are being billed by a person other than the actual exempt provider of the services, the actual provider must give an exempt certification document, Form ST-930, *Certification of Nontaxable Services Provided Via Telephony or Telegraphy or Telephone or Telegraph Service*, to the person who will be doing the billing in order that sales tax (including the increased state sales tax) will not be charged on the exempt services.

This sales tax exempt certification document may not be issued unless the person issuing the document is registered to collect sales tax **or** is specifically exempt under section 1116(a) of the New York State Tax Law (and, if required, issued a Form ST-119, *Exempt Organization Certificate*).

When any person, affiliate or agent other than the actual provider of entertainment or information services bills the recipient of the services on behalf of the provider, that person will be deemed a vendor of the service for sales tax purposes and will be liable for all the obligations of a vendor. Such obligations include collecting, reporting and remitting the sales tax (including the additional 5% state tax) due on entertainment and information services which are furnished, provided or delivered by means of telephony or telegraphy or telephone or telegraph services.

A person deemed a vendor of these services is entitled to and possesses all the rights afforded a vendor, including the right to an exclusion or a credit or refund of tax as provided in section 1132(c) of the New York State Tax Law with respect to such services.

The person providing the billing service, whether doing the actual billing or having the billing done by an affiliate or agent, will be deemed to be a vendor of entertainment or information services when the charges for the services are either listed as part of, or as a schedule to the statement of such person to its customers, or are billed separately.

The term *affiliate* means an entity which:

- directly, indirectly or constructively controls a person deemed a vendor of entertainment or information services
- is controlled by a person deemed a vendor of entertainment or information services; or
- is controlled by a common parent who also controls a person deemed a vendor of entertainment or information services.

The designation of a person as a vendor, by virtue of such person performing the billing of charges on behalf of the actual provider of entertainment or information services, in no way limits the obligations or removes the liabilities of the actual provider of such services or any other person with respect to the sales tax imposed on these services.