

This is an excerpt from 2007 NY S 6807, New York's 2008-2009 budget. It requires certain remote vendors who receive referrals from in-state persons to collect use tax and establishes a temporary amnesty program for certain remote vendors. The Assembly approved it on April 9, 2008 and it was sent to the governor's desk on April 11, 2008.

PART OO-1

Section 1. Paragraph 8 of subdivision (b) of section 1101 of the tax law is amended by adding a new subparagraph (vi) to read as follows:

(VI) FOR PURPOSES OF SUBCLAUSE (I) OF CLAUSE (C) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, A PERSON MAKING SALES OF TANGIBLE PERSONAL PROPERTY OR SERVICES TAXABLE UNDER THIS ARTICLE ("SELLER") SHALL BE PRESUMED TO BE SOLICITING BUSINESS THROUGH AN INDEPENDENT CONTRACTOR OR OTHER REPRESENTATIVE IF THE SELLER ENTERS INTO AN AGREEMENT WITH A RESIDENT OF THIS STATE UNDER WHICH THE RESIDENT, FOR A COMMISSION OR OTHER CONSIDERATION, DIRECTLY OR INDIRECTLY REFERS POTENTIAL CUSTOMERS, WHETHER BY A LINK ON AN INTERNET WEBSITE OR OTHERWISE, TO THE SELLER, IF THE CUMULATIVE GROSS RECEIPTS FROM SALES BY THE SELLER TO CUSTOMERS IN THE STATE WHO ARE REFERRED TO THE SELLER BY ALL RESIDENTS WITH THIS TYPE OF AN AGREEMENT WITH THE SELLER IS IN EXCESS OF TEN THOUSAND DOLLARS DURING THE PRECEDING FOUR QUARTERLY PERIODS ENDING ON THE LAST DAY OF FEBRUARY, MAY, AUGUST, AND NOVEMBER. THIS PRESUMPTION MAY BE REBUTTED BY PROOF THAT THE RESIDENT WITH WHOM THE SELLER HAS AN AGREEMENT DID NOT ENGAGE IN ANY SOLICITATION IN THE STATE ON BEHALF OF THE SELLER THAT WOULD SATISFY THE NEXUS REQUIREMENT OF THE UNITED STATES CONSTITUTION DURING THE FOUR QUARTERLY PERIODS IN QUESTION. NOTHING IN THIS SUBPARAGRAPH SHALL BE CONSTRUED TO NARROW THE SCOPE OF THE TERMS INDEPENDENT CONTRACTOR OR OTHER REPRESENTATIVE FOR PURPOSES OF SUBCLAUSE (I) OF CLAUSE (C) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH.

Section 2. For sales tax quarterly periods commencing before June 1, 2008, the commissioner of taxation and finance may not determine tax, or related interest or penalty, pursuant to section 1138 of the tax law, required to be collected but for this section by a person meeting the following conditions, against that person: (a) on the effective date of this act, the person (1) is presumed to be a vendor by reason of section one of this act; (2) is a vendor solely by reason of activities described in subclause (I) of clause (C) of subparagraph (i) of paragraph (8) of subdivision (b) of section 1101 of the tax law but without regard to whether the person is a vendor under clause (A) of subparagraph (i) of paragraph (8) of subdivision (b) of such section; (3) is not registered as a vendor pursuant to section 1134 of the tax law, was not registered at any time in the nine months prior to that effective date, and was not registered as a vendor at the time of making the sale for which the person failed to collect sales tax; and (b) the person registers as a vendor pursuant to section 1134 of the tax law and commences to collect sales tax by June 1, 2008. Nothing in this section precludes the commissioner of taxation and finance from determining, pursuant to section 1138 of the tax law, sales and use tax, interest, and penalties against a person not meeting the conditions set forth in the preceding sentence.

Section 3. This act shall take effect immediately and shall apply to sales made, uses occurring, and services rendered on or after the date this act shall have become a law in accordance with applicable transition provisions in sections 1106 and 1217 of the tax law and without regard as to the date the seller and the resident entered into the agreement described in section one of this act. Provided, however, that the term "the preceding four quarterly periods ending on the last day of February, May, August, and November" as used in section one of this act may include quarterly periods commencing prior to the effective date of this act.