

AT A REGULAR MEETING OF THE COMMON COUNCIL OF THE CITY  
OF PLATTSBURGH, NEW YORK, HELD AUGUST 27, 1964.

PRESENT: MAYOR TYRELL, ALDERMEN BOOTH, DUKEN, BRANON  
AND FLYNN.

ABSENT: ALDERMEN BEAUVAIS & SABOURIN

BY ALDERMAN FLYNN; SECONDED BY ALDERMAN BRANON

(SEE FOLLOWING SHEETS)

Local Law No. 10 of 1964 amending Local Law No. 3  
(Compensating Use Tax) - Local Law No. 3 of 1962 is hereby amended  
in the following respects:

Section 1:

Paragraph (d) of Section 1 is amended to read as follows:

(d) "Purchase at retail" or "Sale at retail".

(a) A sale to any person for any purpose other than (1) for

resale in the form of tangible personal property, or (2) for incorporation of such property as a material or a part into or for use or consumption directly and exclusively in the production of tangible personal property, for sale, by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture or floriculture. Such term also shall be deemed to include the sale of the services of producing, fabricating, processing, printing or, except for the imprinting of copy upon an already printed product, imprinting tangible personal property to a person who directly or indirectly furnishes the tangible personal property (not purchased by him for disposition or use as specified in clauses (1) and (2) hereof) upon which such services are performed, other than the rendering of services in connection with the repair, alteration, or reconditioning of tangible personal property on behalf of the owner thereof to refit it for the use for which it was originally produced.

(b) The term "retail sale of tangible personal property" does not include:

1. The transfer of tangible personal property to a corporation, solely in consideration for the issuance of its stock, pursuant to a merger or consolidation effected under the New York Stock Corporation Law or New York Business Corporation Law or under a substantially similar statute of another state.
2. The distribution of property by a corporation to its stockholders in the form of a liquidating dividend in whole or partial liquidation solely in consideration for their respective stock ownerships in the corporation.
3. The distribution of property by a partnership, to its partners in whole or partial liquidation solely in consideration for their respective partnership interest.
4. The transfer of property to a corporation upon its organization solely in consideration for the issuance of its stock.
5. The contribution of property to a partnership either upon its formation or subsequent thereto solely in consideration for a partnership interest therein.

Section 2 is amended to read as follows:

Sec. 2. Imposition of Tax.

(a) Commencing July 1, 1962, there is hereby imposed and there shall be paid by every person a tax on the use with the City of any tangible personal property purchased at retail. Commencing July 1, 1962, such tax shall be at the rate of two per centum of the consideration given or contracted to be given for such property or its use plus the cost of transportation, except where such cost is stated and charged separately; provided, however, that if the sale or use of such property was subjected to a tax imposed by any other taxing jurisdiction, the tax herein imposed shall be credited with the amount of such other tax not in excess of the tax herein imposed.

(b) Tangible personal property which has been purchased outside of the City for use outside of the City and subsequently becomes subject to a compensating use tax in such City shall be

taxed on the basis of the purchase price of such property, provided, however:

1. That where a taxpayer affirmatively shows that the property was made use of outside such City by him for more than six months prior to its use within the City, such property shall be taxed on the basis of current market value of the property at the time of its first use within the City. The value of such property for compensating use tax purposes, may not exceed the cost of such property.

2. That the compensating use tax on such tangible personal property brought into the City (other than for complete consumption or for incorporation into real property located in such City) and used in the performance of a contract or subcontract within the City by a purchaser or user for a period of less than six months may be based, at the option of the taxpayer, on the fair rental value of such property for the period of use within the City.

Section 3. The provisions of this Local Law shall not apply except as provided in Subsections (b-1) (b-2) and (h).

Section 3 (b) is hereby amended to read as follows:

3. (b) In respect to the use of property when the property was purchased by the user while a nonresident of the City of Plattsburgh, except in the case of tangible personal property which the user, in the performance of the contract, incorporates into real property located in such City. A person, while engaged in any manner in carrying on any trade, business, profession, vocation or commercial activity shall not be deemed a non-resident with respect to the use of property in or in connection with such trade, business, profession, vocation or commercial activity.

3. (b-1) is hereby added as follows:

3. (b-1) The City imposing such tax may require that any such sale or use not exempt under other sections of this act shall be reported as taxable subject to substantiation by the purchaser or user within two years after such report that such tangible personal property was actually incorporated into real property, or that such tangible personal property was subsequently reshipped by such purchaser or user, or that such property was used solely in the performance of a contract such as that previously described.

3. (b-2) is hereby amended as follows:

3. (b-2) The tax shall not be imposed on (i) the sale or use of tangible personal property purchased in bulk which is stored and not used by the purchaser or user within the City as a general and regular practice and is subsequently reshipped by such purchaser or user for consumption or use at one of his places of business outside the City, or (ii) on the sale to or use by a contractor or subcontractor of tangible personal property which is used by him solely in the performance of a pre-existing lump sum or unit price construction contract. For the purposes of clause (ii) of the preceding sentence, the term "pre-existing lump sum or unit price construction contract" shall mean a contract for the construction of improvements to real property under which the amount payable to the contractor or subcontractor is fixed without regard to the costs incurred by him in the performance thereof, and which (i) was irrevocably entered into prior to the date of adoption of the local law, ordinance or resolution imposing such tax or increasing the rate of tax, or (ii) resulted from the acceptance by a governmental agency of a bid accompanied by a bond or other performance guaranty which was irrevocably submitted prior to such date.

Paragraph (h) of Section 3 is hereby deleted and new paragraphs (h), (i), (j) and (k) are added as follows:

(h) In respect to the use of property purchased in bulk which is stored and not used by the purchaser or user within the City as a general and regular practice and is subsequently re-shipped by such purchaser or user for consumption or use at one of his places of business outside the City.

(i) In respect to the use of tangible property purchased by a contractor or subcontractor which is used by him solely in the performance of a pre-existing lump sum or unit price construction contract. The term pre-existing lump sum or unit price construction contract shall mean a contract for the construction of improvements to real property under which the amount payable to the contractor or subcontractor is fixed without regard to the costs incurred by him in the performance thereof, and which was irrevocably entered into prior to the date of the adoption of this resolution imposing or increasing the rate of tax or resulted from the acceptance by a governmental agency of a bid accompanied by a bond or other performance guarantee which was irrevocably submitted prior to such date.

(j) In respect to the use of tangible personal property which the user in the performance of a construction contract has incorporated into real property located outside the City.

The user and purchaser of tangible personal property referred to in paragraphs (h), (i) and (j) of this section shall be obliged to pay the use tax at the end of each quarter for the tangible personal property located in this City but he shall be entitled to a refund or credit within two years after the filing of the return upon which such property was reported as taxable, and the tax paid, provided further that such claim for refund or credit is substantiated by proof satisfactory to the City Chamberlain that such tangible personal property was actually reshipped by the purchaser or user to one of his places of business outside the City or that such property was used solely in the performance of a pre-existing lump sum or unit price contract or that such tangible personal property was actually incorporated into real property outside the territorial limits of this City. Upon such substantiation, the City Chamberlain shall refund or credit against the liability of such purchaser or user the amount of any tax previously collected upon such sale or use.

(k) In respect to the use of any property to the extent that a retail sales tax or compensating use tax was legally due and paid thereon, without any right to a credit or refund thereof, to any municipality in this state or any other state or jurisdiction within any other state but only when it is shown that such other state or jurisdiction allows a corresponding exemption with respect to the sale or use of tangible personal property upon which a retail sales tax or compensating use tax was paid to any municipality in this state. In the event this City imposes a compensating use tax at a higher rate than the rate of tax in the first taxing jurisdiction, this City may impose a compensating use tax to the extent of the difference in such rates.

Section 9 is amended to read as follows:

Section 9. Assessment and determination of tax. If a return required by this resolution is not filed, or if a return when filed is incorrect or insufficient, the amount of tax due shall be assessed by the City Chamberlain from such information as may be obtainable and, if necessary, the tax may be estimated on the basis of external indices such as number of employees of

the person concerned, rentals paid, stock on hand, or other factors. Written notice of such assessment shall be given to the person liable for the collection or payment of the tax. Such assessment shall finally and irrevocably fix and determine the tax unless the person against whom it is assessed, within thirty days after the giving of notice of such assessment shall apply in writing to the City Chamberlain for a hearing, or unless the City Chamberlain of his own motion shall reassess the same. After such hearing the City Chamberlain shall give notice of his determination to the person against whom the tax is assessed. The determination of the City Chamberlain shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under the provisions of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within ninety days after the giving of the notice of such determination. Such proceeding shall not be instituted unless the amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the City Chamberlain and an undertaking filed with the City Chamberlain in such amount and with such sureties as a Justice of the Supreme Court shall approve to the effect that if such proceedings be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding.

Paragraph (b) of Section 12 is hereby renumbered paragraph (c) and a new paragraph (b) is inserted as follows:

(b) An officer, employee or agent of a corporate vendor shall be personally liable for taxes, penalties and interest collected or required to have been collected by such corporate vendor where collection efforts against the corporation have been unsuccessful, and where fifteen per cent or more of the outstanding shares of voting stock of such corporate vendor are held by such officer, employee or agent or are held by such officer, employee or agent and members of his family and where such officer, employee or agent was able to exercise control over the collection of such taxes and their disposition.

Paragraph (a) of Section 16 is amended to read as follows:

(a) On or before July 1, 1962, or in the case of vendors commencing business or opening new places of business after said date, within three days after such commencement or opening, every vendor selling tangible personal property for use within the City and maintaining a place of business in the City or for any other nontaxable purpose, or any person who is engaged in any business in which the sales or use tax is required to be paid shall file with the City Chamberlain a Certificate of Registration in a form prescribed by him. A person selling tangible personal property for use within the City but not maintaining a place of business in the City, may, if he so elects, likewise file a Certificate of Registration with the City Chamberlain. The City Chamberlain shall promptly thereafter issue without charge to each such vendor a certificate evidencing the authority of such vendor to collect the tax from the purchaser and duplicates thereof for each additional place of business of such vendor. Each certificate or duplicate shall state the place of business to which it is applicable. Such Certificates of Authority shall be prominently displayed in the places of business of the vendor. A vendor who has no regular place of doing business shall attach such a certificate to his car, cart, stand, truck or other merchandising device. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the City Chamberlain upon the vendor's ceasing to do business at the place therein named. However, a vendor who has registered pursuant to the provisions of a resolution imposing a sales tax in this City need

not register again unless the City Chamberlain shall require reregistration. The failure to issue or secure a Certificate of Authority shall not relieve any vendor from the duties of the collecting or remitting the tax.

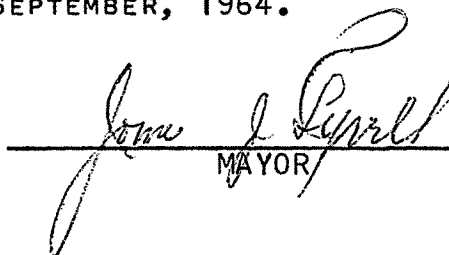
Section 3. That this Local Law shall take effect October 1, 1964.

ON ROLL CALL, ALDERMEN BOOTH, DUKEN , BRANON AND FLYNN  
VOTED IN THE AFFIRMATIVE; NO ONE IN THE NEGATIVE; (ALDERMAN BEAUVAIS  
AND SABOURIN BEING ABSENT) CARRIED.

FOREGOING LOCAL LAW CERTIFIED TO THE MAYOR THIS 10TH  
DAY OF SEPTEMBER, 1964.

  
CITY CLERK

THE FOREGOING LOCAL LAW IS HEREBY APPROVED AFTER PUBLIC  
HEARING HELD THIS 10TH DAY OF SEPTEMBER, 1964.

  
MAYOR