

LOCAL LAW NO. 9 OF 1964

Amending Local Law No. 2 of 1962 (Sales Tax)

BE IT ENACTED by the Common Council of the City of Plattsburgh, New York, as follows:

Local Law No. 2 of 1962 is hereby amended in the following respects:

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

(g) "Retail sales of tangible personal property" or "Sale at retail of tangible personal property".

(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 affected 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 interests.
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.

Schedule A of Section 2 is amended to read as follows:

SCHEDULE A

Food and food products sold for human consumption, including but not limited to, cereals and cereal products, milk and milk products, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruits, spices and salt, sugar and sugar products, candy and confectionery coffee and coffee substitutes, beer or other similar malt beverages; tea, cocoa and cocoa products; water, when delivered to the consumer through mains or pipes; drugs, medicines, eyeglasses, hearing aids, artificial limbs and other devices to correct or alleviate physical or dental incapacities or handicaps when sold upon a physician's or dentist's prescription; eyeglasses furnished upon an optometrist's prescription; newspapers and periodicals; and cigarettes, but not excepting soft drinks or sodas and beverages such as are ordinarily dispensed at bars and soda fountains or in connection therewith (other than coffee, tea and cocoa, beer and other similar malt beverages.)

Paragraph (b) of Section 2 is amended to read as follows:

(b) Receipts from sales by or to the following shall not be subject to tax hereunder, except as provided for in Sub-paragraphs D. J. K. and L. of this Section.

1. The State of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada), improvement district or other political subdivision of the state where it is the purchaser, user or consumer;
2. The United States of America, insofar as it is immune from taxation;
3. The United Nations or other worldwide international organizations of which the United States of America is a member; and
4. Any corporation or association or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals and no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(j) The tax collected upon the sale of tangible personal property which the purchaser, in the performance of a contract, has incorporated into real property located outside this City, shall be refunded or credited to the purchaser provided he files a claim with the City Chamberlain of the City of Plattsburgh Special Tax Section for such refund or credit within two years after the filing of the return upon which the sale there-of was reported and the tax paid, and provided further such claim is substantiated by proof satisfactory to the City Chamberlain that

such tangible personal property has actually been incorporated into real property located outside this City.

(k) The tax collected on the sale or use of tangible personal property purchased in bulk which is stored and not used by the purchaser within the City of Plattsburgh as a general and regular practice and is subsequently shipped by such purchaser for consumption or use at one of his places of business outside the City, shall be refunded or credited to the purchaser provided he files a claim with the City Chamberlain of the City of Plattsburgh Special Tax Section for such refund or credit within two years after the filing of the return upon which the sale thereof was reported and the tax paid and provided further such claim is substantiated by proof satisfactory to the City Chamberlain that such property so purchased was stored and not used by the purchaser with the City and was subsequently reshipped by such purchaser for consumption or use at one of his places of business outside the City.

(L) The tax collected 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 shall be refunded or credited to the purchaser provided he files a claim with the City Chamberlain of the City of Plattsburgh Special Tax Section for such refund or credit within the two years after the filing of the return upon which the sale thereof was reported and the tax paid, and provided further such claim is substantiated by proof satisfactory to the City Chamberlain that such property was used solely in the performance of a contract as described herein. 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 (a) 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 (b) 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.

Section 7 is amended to read as follows:

Section 7. 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 written 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 Laws and Rules of the State of New York, 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 proceeding 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 10 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.

A new paragraph (h) is hereby added to Section 11 as follows:

(h) To impose a retail sales tax on sales of motor fuel and diesel motor fuel, which are made at a retail service station, at a specified amount per gallon in lieu of the imposition of such tax on total receipts.

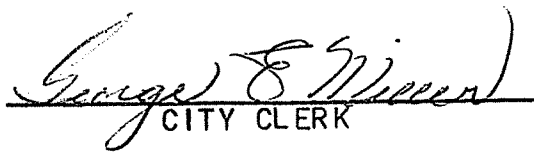
Paragraph (a) of Section 14 is amended to read as follows:

(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 and every person purchasing tangible personal property for resale 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. The City Chamberlain shall promptly thereafter issue without charge to each such vendor or person who purchases for resale 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 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 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. The failure to issue or secure a Certificate of Authority shall not relieve any vendor from the duty of collecting the tax.

Section 8. 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; ALDERMEN
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