

RULE REVIEW

Department of Taxation and Finance Rule Continued Without Modification

Pursuant to section 207.4 of the State Administrative Procedure Act, the Department of Taxation and Finance hereby gives notice of the following:

As part of the Department's 2008 review of rules that were adopted during 1998 and 2003, it has reviewed amendments to 20 NYCRR 527.11(b)(7) (Social and Athletic Clubs) of the Sales and Use Taxes Regulations that were adopted in 1998. By amending Example 29, which illustrates athletic clubs, the rule eliminated the reference to fishing and hunting clubs as examples of athletic clubs whose dues and initiation fees are subject to sales tax and qualified the reference to boating clubs subject to such tax. The statutory authority for this rule is contained in sections 171, subd. First; 1142(1); and 1250 (not subdivided) of the Tax Law. The rule was previously reviewed as part of the Department's 2003 Rule Review published in the *State Register* on January 8, 2003, and was continued without modification. Notice of the 2003 continuance was published in the Rule Review section of the August 27, 2003, issue of the *State Register*.

This rule is once again being continued without modification because there have been no statutory amendments or changes in policy to warrant any modification of the rule.

A summary of the rule was published in the Rule Review section of the January 2, 2008, issue of the *State Register*. The 2008 Rule Review, including the summary, was also posted to the Department's Web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>) on December 28, 2007. The Department did not receive any public comments regarding this rule.

For further information, contact: John W. Bartlett, Department of Taxation and Finance, Taxpayer Guidance Division, Bldg. 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254

Department of Taxation and Finance Rule Continued Without Modification

Pursuant to section 207.4 of the State Administrative Procedure Act, the Department of Taxation and Finance hereby gives notice of the following:

As part of the Department's 2008 review of rules that were adopted during 1998 and 2003, it has reviewed amendments to 20 NYCRR 528.2 (Application of Sales Tax Exemption to Marshmallows) of the Sales and Use Taxes Regulations that were adopted in 1998. This rule deleted regulatory inconsistency in the imposition of sales tax on receipts from the sales of marshmallows and marshmallow bits by allowing for the interpretation of the exemption from sales tax on food to include receipts from the sales of marshmallows of all sizes. The statutory authority for this rule is contained in sections 171, subd. First; 1142(1); and 1250 (not subdivided) of the Tax Law. The rule was previously reviewed as part

of the Department's 2003 Rule Review published in the *State Register* on January 8, 2003, and was continued without modification. Notice of the 2003 continuance was published in the Rule Review section of the April 30, 2003, issue of the *State Register*.

This rule is once again being continued without modification because it provides for a practical and uniform sales tax treatment of marshmallows. Prior to the rule, large marshmallows were considered to be candy and confectionery, and were consequently subject to sales tax. At the same time, small marshmallows were considered to be food used in cooking and baking and, therefore, were exempt from tax under section 1115(a)(1) of the Tax Law. There is no need to revert to such a distinction. Moreover, there have been no statutory amendments or changes in policy to warrant any modification of this rule.

A summary of this rule was published in the Rule Review section of the January 2, 2008 issue of the *State Register*. The 2008 Rule Review, including the summary, was also posted to the Department's Website (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>) on December 28, 2007. The Department did not receive any public comments regarding this rule.

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