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County of Erie

DENNIS T. GORSKI
COUNTY EXECUTIVE

PHONE: 716-858-8500

February 2, 1999

The Honorable
Erie County Legislature
25 Delaware Avenue
Buffalo, New York 14202

Honorable Members:

Your Honorable Body is respectfully requested to give its immediate consideration and approval to the enclosed resolution to extend the County's one-percent sales tax.

Both the New York State Assembly and the New York State Senate have approved legislation granting Erie County the authority to extend the one-percent sales tax. The legislation has been conveyed to the Governor's Office for final approval and will be signed by the Governor prior to your Honorable Body's February 4th Legislative Session.

Your meeting of February 4, 1999 is the only regular session of the Erie County Legislature that will be held prior to the statutory deadline for notifying the State Department of Taxation and Finance that the one-percent sales tax has been duly extended. Hence, to avoid any lapse in the collection of the one-percent sales tax, it is imperative that the Erie County Legislature enact this resolution on that date.

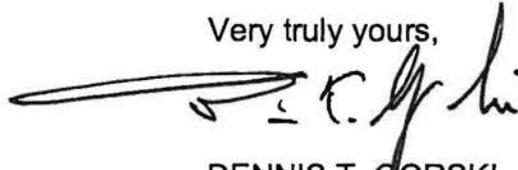
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Following passage of this resolution, a certified copy of same must be filed with the State Department of Taxation and Finance, the State Comptroller, the Secretary of State and the County Clerk.

Thank you in advance for your cooperation and assistance. Representatives of my office are available to respond to any questions you may have.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dennis T. Gorski". The signature is written in a cursive style with a long horizontal stroke at the beginning.

DENNIS T. GORSKI
County Executive

klg

REF: BUDSAL.EXT

ACCOMPANYING MEMORANDUM

Re: EXTENSION OF ONE-PERCENT SALES TAX

A. Summary of Recommended Action

It is recommended that the Erie County Legislature immediately adopt the attached amendment to the Erie County Sales and Use Tax Resolution extending the additional one-percent sales tax in Erie County for the period March 1, 1999 through February 29, 2000.

B. Fiscal Impact

The adopted 1999 Erie County Budget included \$83.6 million in revenue to be received by Erie County from extension of this tax subsequent to March 1, 1999.

C. Reasons for Recommendation

The adopted 1999 Erie County Budget includes \$83.6 million anticipated revenue from extension of the additional one-percent sales tax during 1999. This extension is necessary to continue Erie County's fiscal stability in 1999. Unless the sales tax is extended, the 1999 Erie County Budget will be out of balance in the amount of \$83.6 million, the amount anticipated to be realized by the extended tax in 1999.

D. Background of Proposal

The New York State Legislature has passed, and the Governor will sign, legislation enabling Erie County to extend the additional one-percent sales tax through February 29, 2000. The additional tax was imposed in Erie County on March 1, 1985 to avert a fiscal crisis in the County that year. Subsequent extensions of the tax were made in 1988, and each year thereafter, to maintain financial stability of the County government.

E. Consequence of Negative Action

The Erie County Budget will be out of balance in the amount of \$83.6 million in 1999.

F. Steps Following Approval of Measure

Upon adoption of the Sales and Use Tax Resolution amendment, the extended tax will be effective upon filing of notice, by registered mail, to the New York State Commissioner of Taxation and Finance. Certified copies must also be sent to the New York State Comptroller, the Secretary of State and the County Clerk.

RESOLUTION

of the

Legislature of Erie County, amending the Erie County Sales and Use Tax Resolution which imposes taxes on sales and uses of tangible personal property and on certain services, and on occupancy of hotel rooms, admission charges and club dues, pursuant to Article 29 of the Tax Law of the State of New York, to continue the imposition of the additional 1% rate of tax, pursuant to Chapter 6 of the Laws of 1999.

Be it enacted by the Legislature of the County of Erie, as follows:

Section 1. The first sentence of section two of the Erie County Sales and Use Tax Resolution, being a resolution adopted by the Board of Supervisors of the County of Erie being Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, is amended to read as follows:

SECTION 2. Imposition of sales tax. On and after March first, nineteen hundred eighty-nine, there is hereby imposed and there shall be paid a tax of three percent upon, and for the period commencing March first, nineteen hundred eighty-nine and ending February [twenty-eighth, nineteen hundred ninety-nine] twenty-ninth, two thousand, there is hereby imposed and there shall be paid an additional tax of one percent upon:

Section 2. Subdivisions (h) and (i) of section three of the Erie County Sales and Use Tax Resolution, being a resolution adopted by the Board of Supervisors of the County of Erie being Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, are hereby amended to read as follows:

(h) With respect to the additional tax of 1 percent imposed for the period commencing March 1, 1989, and ending [February 28, 1999] February 29, 2000, the provisions of subdivisions (a), (b), (c), (d), (e), (f) and (g) of this section apply, except that for the purposes of this subdivision, all references in said subdivisions (a), (b), (d) and (e) to an effective date shall be read as referring to March 1, 1989, all references in said subdivision (a) to the date four months prior to the effective date shall be read as referring to November 1, 1988, and the reference in subdivision (b) to the date immediately preceding the effective date shall be read as referring to February 28, 1989.

Nothing herein shall be deemed to exempt from tax at the rate in effect prior to March 1, 1989, any transaction which may not be subject to the additional tax imposed effective on that date.

(i) The taxes imposed under subdivisions (a), (c) and (d) of Section 2 shall be paid at the rate of 3 percent upon all sales made and services rendered on or after March first, [nineteen hundred ninety-nine] two thousand. With respect to the tax rate of 3 percent effective March first, nineteen hundred ninety-nine] two thousand, the provisions of subdivisions (b), (c), (d), (e) and (f) of this section apply, except that for the purposes of this subdivision, all references in said subdivisions (b), (c), (d) and (e) to an effective date shall be read as referring to March first, [nineteen hundred ninety-nine] two thousand, and the reference in subdivision (b) to the date immediately preceding the effective date shall be read as referring to February [twenty-eight, nineteen hundred ninety-nine] twenty-nine, two thousand. Nothing herein shall be deemed to exempt from tax at the rate in effect prior to March first, [nineteen hundred ninety-nine] two thousand any transaction which may not be subject to the lowered tax rate in effect on that date.

Section 3. Section four of the Erie County Sales and Use Tax Resolution, being a resolution adopted by the Board of Supervisors of the County of Erie being Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, is amended to read as follows:

SECTION 4. Imposition of compensating use tax.

(a) Except to the extent that property or services have already been or will be subject to the sales tax under this resolution, there is hereby imposed on every person a use tax for the use within this taxing jurisdiction on and after March first, nineteen hundred eighty-nine, except as otherwise exempted under this enactment, (A) of any tangible personal property purchased at retail, (B) of any tangible personal property (other than computer software used by the author or other creator) manufactured, processed or assembled by the user, (i) if items of the same kind of tangible personal property are offered for sale by him in the regular course of business, or (ii) if items are used as such or incorporated into a structure, building or real property, by a contractor, subcontractor or repairman in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, if items of the same kind are not offered for sale as such by such contractor, subcontractor or repairman or other user in the regular course of business, (C) of any of the services described in paragraphs (1), (7),

and (8) of subdivision (c) of section 2, (D) of any tangible personal property, however acquired, where not acquired for the purposes of resale, upon which any of the services described under paragraphs (2), (3) and (7) of subdivision (c) of section 2 have been performed, (E) of any telephone answering service described in subdivision (b) of section 2, and (F) of any computer software written or otherwise created by the user if the user offers software of a similar kind for sale as such or as a component part of other property in the regular course of business.

(b) For purposes of clause (A) of subdivision (a) of this section, the tax shall be at the rate of four percent, and on and after March first, [nineteen hundred ninety-nine] two thousand, the tax shall be at the rate of three percent, of the consideration given or contracted to be given for such property, or for the use of such property, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section one, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

(c) For purposes of subclause (i) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent, and on and after March first, [nineteen hundred] ninety-nine] two thousand, the tax shall be at the rate of three percent, of the price at which items of the same kind of tangible personal property are offered for sale by the user, and the mere storage, keeping, retention or withdrawal from storage of tangible personal property by the person who manufactured, processed or assembled such property shall not be deemed a taxable use by him.

(d) For purposes of subclause (ii) of clause (B) of subdivision (a) of this section, the tax shall be at the rate of four percent, and on and after March first, [nineteen hundred ninety-nine] two thousand, the tax shall be at the rate of three percent, of the consideration given or contracted to be given for the tangible personal property manufactured, processed or assembled into the tangible personal property the use of which is subject to tax, including any charges for shipping or delivery as described in paragraph three of subdivision (b) of section one.

(e) Notwithstanding the foregoing provisions of this section, for purposes of clause (B) of subdivision (a) of this section, there shall be no tax on any portion of such price which represents the value added by the user to tangible personal property which he fabricates and installs to the specifications of an addition or capital improvement to real property, property or land, as the terms real property, property or land are defined in the real property tax law, over and above the prevailing normal purchase price prior to such fabrication of such tangible personal property which a manufacturer, producer or assembler would charge an unrelated contractor who similarly fabricated and installed such tangible personal property to the specifications of an addition or

capital improvement to such real property, property or land.

(f) For purposes of clauses (C), (D) and (E) of subdivision (a) of this section, the tax shall be at the rate of four percent, and on and after March first, [nineteen hundred ninety-nine] two thousand, the tax shall be at the rate of three percent, of the consideration given or contracted to be given for the service, including the consideration for any tangible personal property transferred in conjunction with the performance of the service and also including any charges for shipping and delivery of the property so transferred and of the tangible personal property upon which the service was performed as such charges are described in paragraph three of subdivision (b) of section one.

(g) For purposes of clause (F) of subdivision (a) of this section, the tax shall be at the rate of four percent, and on and after March first, [nineteen hundred ninety-nine] two thousand, the tax shall be at the rate of three percent, of the consideration given or contracted to be given for the tangible personal property which constitutes the blank medium, such as disks or tapes, used in conjunction with the software, or for the use of such property, and the mere storage, keeping, retention or withdrawal from storage of computer software described in such clause (F) by its author or creator shall not be deemed a taxable use by such person.

Section 4. Subdivision (D) of clause (1) of Section 11 of the Erie County Sales and Use Tax Resolution, being a resolution adopted by the Board of Supervisors of the County of Erie being Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, is amended to read as follows:

(D) With respect to the additional tax of one percent imposed effective for the period beginning March first, nineteen hundred eighty-nine, and ending February [twenty-eight, nineteen hundred ninety-nine] twenty-nine, two thousand, in respect to the use of property used by the purchaser in this County prior to March first, nineteen hundred eighty-nine.

Section 5. This enactment shall take effect March first, nineteen hundred ninety-nine.