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COUNTY OF ERIE

CHRIS COLLINS

COUNTY EXECUTIVE

March 14, 2011

Immediate Consideration Requested

The Honorable
Erie County Legislature
92 Franklin Street – Fourth Floor
Buffalo, New York 14202

Re: Assembly and Senate Bill introduction request for Legislation authorizing two-year extension of additional 1% and .75% Sales and Compensating Use Tax

Honorable Members:

The accompanying memorandum from my office explains that timely adoption of the proposed resolution and the subsequent introduction to the Assembly and the Senate is essential for the continued imposition by Erie County of its additional 1% and .75% sales and compensating use tax for the two (2) year period from December 1, 2011 to November 30, 2013.

Attached for your information, you will also find a copy of the NYS Bill extending the additional sales and compensating use tax rates along with a memorandum in support of same. Please note however, that the resolution submitted for consideration today simply requests that those lawmakers who serve as Western New York's delegation in Albany, sponsor and introduce this Bill to the collective membership of both the Assembly and the Senate. Once the Bill has been introduced and assigned bill numbers we will again ask your Honorable Body to pass respective home rule requests for the consideration of the Assembly and Senate. After the Bill is passed in both the Assembly and the Senate and the Governor has signed the Bill into law, your Honorable Body will be presented with a final resolution to formally amend the Erie County Sales and Use Tax Resolution to incorporate the new State Legislation. The County Attorney's Office will then comply with the filing requirements set out in New York State Tax Law and the two extensions will be complete.

Should your honorable body require further information, I encourage you to contact the Division of Budget and Management, the County Attorney or the County Executive's Office. Thank you for your consideration on this matter.

Sincerely,

CHRIS COLLINS
Erie County Executive

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Office of the County Executive
Re: Assembly and Senate Bill introduction request for Legislation authorizing two-year extension of additional 1% and .75% Sales and Compensating Use Tax
Date: March 14, 2011

SUMMARY

It is recommended that the Erie County Legislature timely adopt the attached resolution which requests the introduction of a New York State Bill authorizing Erie County to continue the imposition of the additional 1% and .75% rate of sales and compensating use tax in Erie County during the period from December 1, 2010 through November 30, 2013.

FISCAL IMPLICATIONS

Positive.

REASONS FOR RECOMENDATION

A resolution requesting introduction of the State Assembly and Senate Legislation is required prior to subsequent action.

BACKGROUND INFORMATION

A request for the introduction of a State Bill authorizing Erie County to continue the imposition of its additional 1% and .75% sales and compensating use tax during the two (2) year period from December 1, 2010 through November 30, 2013 is needed for Erie County's sponsoring Senator and Assemblyman to act on such request.

CONSEQUENCES OF NEGATIVE ACTION

Failure to extend the additional 1% and .75% sales tax rate would mean the annual loss of nearly \$250 million in County revenue and would create a severe challenge to the continued operation of County government and its delivery of services.

STEPS FOLLOWING APPROVAL

The State Bill will be introduced in both the Senate and the Assembly and assigned respective Bill numbers. Once the Bill numbers are assigned your Honorable Body will be presented with Home Rule Requests which will ask the Senate and Assembly to pass the Bill. Once passed by both bodies, the Governor will sign into law and your Honorable Body will once again be presented with a final resolution amending the Erie County Sales and Use Tax Resolution to incorporate the newly authorized extension. A certified copy of this adopted resolution amending the Erie County Sales and Compensating Use Tax Resolution must be timely sent by registered or certified mail to the Commissioner of the New York State Department of Taxation and Finance in Albany.

A RESOLUTION SUBMITTED BY:
OFFICE OF THE COUNTY EXECUTIVE

WHEREAS, Erie County is requesting authorization to continue to impose an additional one percent and three quarters percent sales and compensating use tax pursuant to New York State Tax Law 1210 (i)(4); and

WHEREAS, the revenue anticipated from this additional tax will allow the County of Erie to continue to provide services deemed vital to the community, while maintaining a balanced budget; and

WHEREAS, the Office of the Erie County Attorney has prepared the necessary State authorizing legislation to effectuate the continued imposition of sales and compensation use tax; and

WHEREAS, Erie County derives all of its tax imposing authority directly from State law; and

WHEREAS, Erie County's authority to impose its additional 1% and .75 % sales tax rate will expire at midnight on November 30, 2011 absent enactment of new State authorizing legislation.

NOW, THEREFORE BE IT

RESOLVED, that the Erie County Legislature hereby memorializes to the NYS Assembly and Senate, particularly those lawmakers who serve as Western New York's delegation in Albany, that immediate introduction of new State authorizing legislation is needed so that Erie County can continue to impose its additional 1% and .75% sales tax rate for the period beginning December 1, 2011 and ending November 30, 2013; and be it further

RESOLVED, that, as the proposed Bill indicates, if the county of Erie imposes the additional one percent rate of sales and compensating use taxes authorized by item (i) of clause (4) of subparagraph (i) of the opening paragraph of section twelve hundred ten of this article during the period beginning January first, two thousand seven, or thereafter, the county shall allocate each calendar year the first twelve million five hundred thousand dollars of the net collections from such one percent rate to the cities of such county and the area in such county outside its cities to be applied or distributed in the same manner and proportion as the net collections for such cities and area are applied or distributed under the revenue distribution agreement entered into pursuant to the authority of subdivision (c) of section twelve hundred sixty-two of this part in effect on January first, two thousand six, and subject to all provisions of such agreement governing the net collections for such cities and area and shall retain the remainder of such net collections for any county purpose; and be it further

RESOLVED, that certified copies of this resolution be transmitted to the Honorable Robin Schimminger of the NYS Assembly and the Honorable Michael Ranzenhofer of the NYS Senate, together with the Department of Budget, the County Attorney, and the County Comptroller.

ACCOMPAYNYING MEMORANDUM

AN ACT to amend the tax law, in relation to the imposition of additional rates of sales and compensating use taxes by Erie County and to repeal section 1210-D of the tax law in relation thereto

Bill Number:

Sponsor:

Purpose: To authorize Erie County to impose an additional one percent rate and an additional three-quarters of one percent rate of sales and compensating use taxes, for the period commencing December 1, 2011, and ending November 30, 2013, and to provide for distribution of some of the net collections from the additional rates. The bill also repeals section 1210-D of the Tax Law.

Summary of Provisions: Bill section 1 would amend clause 4 of subparagraph (i) of the opening paragraph of section 1210 of the Tax Law, which authorizes counties and cities to impose sales and use taxes at specified rates. Clause 4 would authorize Erie County to impose an additional one percent rate and an additional three-quarters of one percent rate of such taxes for the period commencing December 1, 2011, and ending November 30, 2013. Currently the county is authorized to impose these two additional rates through November 30, 2011, the one percent rate pursuant to section 1210 and the three-quarters of one percent rate pursuant to section 1210-D of the Tax Law.

Bill section 2 would repeal Tax Law section 1210-D, because bill section one moves the authority to impose the additional three-quarters of one percent rate to section 1210.

Bill section 3 would amend Tax Law section 1224(e) to provide that Erie County has the sole right to impose the additional three-quarters of one percent rate of tax, and that such additional rate is not subject to preemption. These provisions are currently found in section 1210-D. Section 1224(e) also has similar provisions applicable to the additional one percent rate.

Bill section 4 would amend Tax Law section 1262-q to continue the county's current allocation and distribution scheme for a portion of the net collections from the additional one percent rate. Section 1262-q would also be amended to provide that net collections from the additional three-quarters of one percent rate shall be used by the county solely for county purposes and shall not be subject to any revenue distribution agreement the county entered into under section 1262(c) of the Tax Law. Identical provisions applicable to the additional three-quarters of one percent rate are currently found in section 1210-D.

Bill section 5 provides that the bill would take effect immediately, provided that bill section 2 repealing Tax Law section 1210-D would take effect December 1, 2011.

Existing Law: Section 1210 of the Tax Law authorizes counties and cities to impose sales and compensating use taxes generally at a rate not to exceed three percent. More than 50 counties outside New York City and five cities are each authorized to impose an additional rate of tax in excess of three percent. Pursuant to section 1210(a), a county or city can impose the "general" sales and use taxes, consisting of the six subdivisions of section 1105 of the Tax Law, which imposes the State's sales taxes, and of the related compensating use taxes in section 1110 of the Tax Law, which imposes the State's use

taxes. Or, pursuant to section 1210(b), a county or city can impose one or more of the taxes described in section 1105(b), (d), (e), or (f), which are known as the "segmented taxes," plus related use taxes. Erie County currently imposes the "general" sales and use taxes at the rate of three percent. The county is also authorized to, and does, impose an additional one percent rate pursuant to section 1210 of the Tax Law for the period December 1, 2009, through November 30, 2011. The county is also authorized to, and does, impose an additional three-quarters of one percent rate pursuant to section 1210-D of the Tax Law for the period December 1, 2009, through November 30, 2011. All of the substantive provisions of section 1210-D, repealed by bill section 2, are incorporated into the relevant portions of sections 1210, 1224(e), and 1262-q of the Tax Law by the other sections of the bill.

Justification: Erie County has requested authorization to require an additional one percent and three-quarters percent sales and compensating use tax. The revenue anticipated from this additional tax will allow the County of Erie to continue to provide services deemed vital to the community while maintaining a balanced budget.

Budget Implications: None to the State. Failure to extend the additional one percent and three-quarters percent sales and compensating use tax rate would mean the annual loss of nearly \$250 million in County revenue and would create a severe challenge to the continued operation of County government and its delivery of services.

Effective Date: This act shall take effect immediately, provided that section two of this act shall take effect December first, two thousand eleven.

AN ACT to amend the tax law, in relation to the imposition of additional rates of sales and compensating use taxes by Erie County and to repeal section 1210-D of the tax law in relation thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§1. Clause 4 of subparagraph (i) of the opening paragraph of section 1210 of the tax law, as amended by chapter 266 of the laws of 2010, is amended to read as follows:

(4) the county of Erie is hereby further authorized and empowered to adopt and amend local laws, ordinances or resolutions imposing such taxes (i) at a rate which is one percent additional to the three percent rate authorized above in this paragraph for such county for the period beginning January tenth, nineteen hundred eighty-eight and ending November thirtieth, two thousand [eleven] thirteen; and (ii) at a rate which is three-quarters of one percent additional to the three percent rate authorized above in this paragraph, and which is also additional to the one percent rate also authorized above in this clause for such county, for the period beginning December first, two thousand eleven, and ending November thirtieth, two thousand thirteen;

§2. Section 1210-D of the tax law is **REPEALED**.

§3. Subdivision (e) of section 1224 of the tax law, as amended by chapter 985 of the laws of 1994, is amended to read as follows;

(e) The county of Erie shall have the sole right to impose the additional one percent rate and the additional three-quarters of one percent rate of tax which such county is authorized to impose pursuant to the authority of section twelve hundred ten of this article, such additional [rate] rates of tax shall be [an] in addition to any other tax which such county may impose or may be imposing pursuant to this article or any other law and such additional [rate] rates of tax shall not be subject to preemption. The maximum three percent rate referred to in this section shall be calculated without reference to the additional one percent rate and the additional three-quarters of one percent rate of tax which the county of Erie is authorized and empowered to adopt pursuant to section twelve hundred ten of this article .

§4. Section 1262-q of the tax law, as amended by chapter 266 of the laws of 2010, is amended to read as follows:

§ 1262-q. Erie county – disposition of net collections from the one percent [rate] and the three-quarters of one percent rates of sales and compensating use taxes in excess of three percent.

Notwithstanding any provision of law to the contrary[, if]: (1) If the county of Erie imposes the additional one percent rate of sales and compensating use taxes authorized by item (i) of clause (4) of subparagraph (i) of the opening paragraph of section twelve hundred ten of this article during the period beginning January first, two thousand seven, or thereafter, the county shall allocate each calendar year the first twelve million five hundred thousand dollars of the net collections from such one percent rate to the cities of such county and the area in such county outside its cities to be applied or distributed in the same manner and proportion as the net collections for such cities and area are applied or distributed under the revenue distribution agreement entered into pursuant to the authority of subdivision (c) of section twelve hundred sixty-two of this part in effect on January first, two thousand six, and subject to all provisions of such agreement governing the net collections for such cities and area and shall retain the remainder of such net collections for any county purpose.

(2) Net collections from the additional three-quarters of one percent rate of sales and compensating use taxes which the county may impose during the period commencing December first, two thousand eleven, and ending November thirtieth, two thousand thirteen, pursuant to the authority of item (ii) of clause (4) of subparagraph (i) of the opening paragraph of section twelve hundred ten of this article shall be used by the county solely for county purposes and shall not be subject to any revenue distribution agreement the county entered into pursuant to the authority of subdivision (c) of section twelve hundred sixty-two of this part.

§ 5. This act shall take effect immediately, provided that section two of this act shall take effect December first, two thousand eleven.