



ERIE COUNTY CLERK

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

September 9, 2013

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

IMMEDIATE CONSIDERATION REQUESTED

Re: Continued Imposition of Additional 1% and Additional 0.75% Sales and Compensating Use Tax for Period Ending November 30, 2015

Dear Honorable Members:

Please find enclosed for your approval a Resolution reauthorizing the County's imposition of the additional 1% and the additional 0.75% sales and compensating use tax for the period December 1, 2013 to November 30, 2015.

The County's authority to impose the additional 1.0% and the additional 0.75% sales and compensating use tax expires on November 30, 2013. Every two years the County must request the approval of legislation in the New York State Assembly and New York State Senate to allow Erie County to continue this critical revenue stream.

Your Honorable Body unanimously approved a Bill Request for Legislation Authorizing the Extension of the Additional 1.0% and the Additional 0.75% Sales and Compensating Use Tax at your January 20, 2013 session and unanimously approved a Home Rule Request for such legislation at the April 11, 2013 session. In June 2013, the New York State Senate and State Assembly passed the legislation and on August 19, 2013, Governor Andrew Cuomo signed the bill into law. The final step in this process is approval by your Honorable Body of the attached resolution.

Should your Honorable Body require further information, I encourage you to contact the Division of Budget and Management or the County Attorney's Office.

Sincerely,

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/tc
Enclosure

cc: Erie County Fiscal Stability Authority
Erie County Comptroller Stefan I. Mychajliw
Robert W. Keating, Director of Budget and Management

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Office of the County Executive
Re: Home Rule Request - Extension of Additional 1% and Additional 0.75% Sales and Compensation Use Tax
Date: September 6, 2013

SUMMARY

It is recommended that the Erie County Legislature timely adopt the attached resolution authorizing the continued imposition of the additional 1% and the additional 0.75% sales and compensating use tax for the period December 1, 2013 through November 30, 2015.

FISCAL IMPLICATIONS

Positive - \$265 million in annual revenue.

REASONS FOR RECOMMENDATION

In order to continue to impose the 1% and the 0.75% sales and compensating use taxes beyond November 30, 2013, the attached resolution must be approved by the County Legislature.

BACKGROUND INFORMATION

This Honorable Body unanimously approved a Bill Request for Legislation Authorizing the Extension of the Additional 1.0% and the Additional 0.75% Sales and Compensating Use Tax at your January 20, 2013 session and unanimously approved a Home Rule Request for such legislation at the April 11, 2013 session. In June 2013, the New York State Senate and State Assembly passed the legislation and on August 19, 2013, Governor Andrew Cuomo signed the bill into law. The final step in this process is approval by the Erie County Legislature of the attached resolution.

CONSEQUENCE OF NEGATIVE ACTION

Failure to extend the additional 1% and the additional 0.75% sales and compensating use tax would mean the annual loss of \$265 million in County revenue, \$12.5 million of which is shared with local governments, and would create a severe challenge to the continued operation of County government and its delivery of services.

STEPS FOLLOWING APPROVAL

The Clerk of the Legislature will seal and certify five copies of the resolution and provide the certified resolutions to the Department of Law for filing with the State.

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 and the additional ¾% rate of tax, pursuant to Article 29 of the New York Tax Law.

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 as 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 November thirtieth, two thousand [thirteen,] fifteen, 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 as Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, are 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 November 30, [thirteen] fifteen, 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 December first, two thousand [thirteen] fifteen. With respect to the tax rate of 3 percent effective December first, two thousand [thirteen] fifteen, 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 December first, two thousand [thirteen] fifteen, and the reference in subdivision (b) to the date immediately preceding the effective date shall be read as referring to November thirtieth, two thousand [thirteen] fifteen. Nothing herein shall be deemed to exempt from tax at the rate in effect prior to December first, two thousand [thirteen] fifteen, 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 as 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 December first, two thousand [thirteen] fifteen, 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 December first, two thousand [thirteen] fifteen, 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 December first, two thousand [thirteen] fifteen, 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 December first, two thousand [thirteen] fifteen, 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 December first, two thousand [thirteen] fifteen, 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. Section four-A of [T] the Erie County Sales and Use Tax Resolution, being a resolution adopted by the Board of Supervisors of the County of Erie as Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, is amended [by amending section 4-A thereof] to read as follows:

SECTION 4-A. Imposition of additional rate of sales and compensating use taxes.

In addition to the sales and compensating use taxes imposed by sections 2 and 4 of this resolution, there is hereby imposed and there shall be paid an additional three-quarters of one percent rate of such sales and compensating use taxes, for the period beginning December 1, 2009 and ending November 30, [thirteen] fifteen. Such additional taxes shall be identical to the taxes imposed by such sections 2 and 4 and shall be administered and collected in the same manner as such taxes. All of the provisions of this resolution relating or applicable to the administration and collection of the taxes imposed by such sections 2 and 4 shall apply to the additional taxes imposed by this section, including the applicable transitional provisions, limitations, special provisions, exemptions, exclusions, refunds and credits as are set forth in this resolution, with the same force and effect as if those provisions had been incorporated in full into this section and had expressly referred to the additional taxes imposed by this section; provided that net collections from such additional rate shall be set aside for county purposes as provided in subdivision (f) of section 14 of this resolution.

Section 5. Subdivisions (D) and (E) of clause (1) of [S] 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 as Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, are amended to read as follows:

(D) With respect to the additional tax of one percent imposed by section 4 of this resolution for the period beginning March first, nineteen hundred eighty-nine, and ending November thirtieth, two thousand [thirteen] fifteen, in respect to the use of property used by the purchaser in this County prior to March first, nineteen hundred eighty-nine.

(E) With respect to the additional tax of three-quarters of one percent imposed by section 4-A of this resolution, for the period beginning December 1, 2009 and ending November 30, [thirteen] fifteen, in respect to the use of property used by the purchaser in this county prior to January 15, 2006.

Section 6. Subdivision (f) of section 14 of the Erie County Sales and Use Tax Resolution, being a resolution adopted by the Board of Supervisors of the County of Erie as Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, is amended to read as follows:

(f) Net collections from the additional three-quarters of one percent rate of taxes imposed during the period commencing December 1, 2009 and ending November 30, [thirteen] fifteen, by section 4-A of this resolution [shall be paid to] received by the county [and] shall be used by the county solely for county purposes and shall not be subject to any revenue distribution agreement entered into pursuant to the authority of subdivision (c) of section 1262 of the Tax Law. [Nor shall any part of such net collections, or other County revenues, be subject to the revenue sharing formula set forth in a resolution adopted by the Erie County Legislature on December 7, 2004, relative to twelve million five hundred thousand dollars.]

Section 7. Subdivision (g) of section 14 of the Erie County Sales and Use Tax Resolution, being a resolution adopted by the Board of Supervisors of the County of Erie as Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, is amended to read as follows:

(g) The County shall allocate each calendar year the first twelve million five hundred thousand dollars (\$12,500,000) of the net collections from the additional one percent rate of sales and compensating use taxes imposed during the period commencing December 1, [2011] 2013, and

ending November 30, [2013] 2015, by sections 2 and 4 of this resolution to the cities of the County and the area in the County outside the cities and such net collections shall 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 1262 of the Tax Law in effect on January 1, 2006, and shall be subject to all provisions of such agreement governing the net collections for such cities and area, and the County shall retain the remainder of [such] net collections from such additional one percent rate which shall be used by the County for any County purpose and such remainder shall not be subject to any revenue distribution agreement entered into pursuant to the authority of subdivision (c) of section 1262 of the Tax Law.

Section 9. This enactment shall take effect December first, two thousand thirteen.

NOTE: ADDITIONS IN TEXT ARE INDICATED BY UNDERLINE; DELETIONS BY [BRACKETS]