

MEETING NO. 3
January 25, 2001

ERIE COUNTY LEGISLATURE

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MEETING NO. 3
SPECIAL SESSION
January 25, 2001

The Legislature was called to order by Chairman Swanick.

All Members Present.

A moment of silence was held.

The Pledge of Allegiance was led by Mr. Greenan

Minutes of the previous meeting were tabled.

COMMUNICATIONS FROM ELECTED OFFICIALS

FROM THE COUNTY EXECUTIVE

Item 1 – MS. PEOPLES presented the following resolution and moved for immediate consideration. MS. MARINELLI seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 35

Re: Extension of the County's
 Additional One-Percent Sales Tax.
 (Comm. 3E-1)

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 4 of the Laws of 2001.

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 hereby further amended to read as follows:

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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, [two thousand one] two thousand two, 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 hereby further 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, [2001] 2002, 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, [two thousand one] two thousand two. With respect to the tax rate of 3 percent effective March first, [two thousand one] two thousand two, 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, [two thousand one] two thousand two, and the reference in subdivision (b) to the date immediately preceding the effective date shall be read as referring to February twenty-eight, [two thousand one] two thousand two. Nothing herein shall be deemed to exempt from tax at the rate in effect prior to March first, [two thousand one] two thousand two 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 hereby further 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, [two thousand one] two thousand two, 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, [two thousand one] two thousand two, 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, [two thousand one] two thousand two, 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, [two thousand one] two thousand two, the tax shall

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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, [two thousand one] two thousand two, 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 as Item 8 of Meeting Number 31, held July 27, 1965, Supervisors Proceedings, page 666, as amended, is hereby further 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, [two thousand one] two thousand two, 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, two thousand one.

MS. PEOPLES moved the approval of the resolution. MS. MARINELLI seconded.

CHAIRMAN SWANICK directed that a roll call vote be taken.

AYES: CHASE, GREENAN, LARSON, McCARVILLE, PAULY, RANZENHOFER, WEINSTEIN, DeBENEDETTI, DUSZA, FISHER, FITZPATRICK, HOLT, KUWIK, MARINELLI, OLMA, PEOPLES, & SWANICK. AYES – 17, NOES – 0.

CARRIED UNANIMOUSLY.

FROM CHAIRMAN SWANICK

Item 2 – (Comm. 3E-2) Calling Special Meeting.

Received, filed and printed.

January 22, 2001

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ERIE COUNTY LEGISLATURE

Laurie A. Manzella, Clerk
 Erie County Legislature
 25 Delaware Avenue – 7th Floor
 Buffalo, New York 14202

Dear Ms. Manzella:

Pursuant to Rule 2 of the *RULES OF ORDER* of the Erie County Legislature, you are hereby directed to call a Special Meeting of the Erie County Legislature to be held on **THURSDAY, JANUARY 25, 2001, AT TWELVE O’CLOCK** in the afternoon of that day in the Erie County Legislative Chambers, 25 Delaware Avenue, 7th Floor, Buffalo, New York.

The purpose of this meeting will be to consider and act upon the following:

- A communication from the County Executive regarding *THE EXTENSION OF THE COUNTY’S ADDITIONAL ONE-PERCENT SALES TAX*.

Thank you.

Sincerely,

CHARLES M. SWANICK
 Chairman
 Erie County Legislature

COMMUNICATIONS FROM THE DEPARTMENTS

FROM THE CLERK OF THE LEGISLATURE

Item 3 – (Comm. 3D-1) Special Meeting Notice.

Received, filed and printed.

January 22, 2001

To: All Erie County Legislators
 From: Laurie A. Manzella, Clerk of the Legislature
 Subject: **SPECIAL MEETING NOTICE**

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PLEASE TAKE NOTICE that pursuant to Rule 2 of the *RULES OF ORDER* of the Erie County Legislature and under the direction of Chairman Charles M. Swanick, there will be a **SPECIAL MEETING** of the Erie County Legislature on **THURSDAY, JANUARY 25, 2001, at twelve o'clock in the afternoon** of that day in the Erie County Legislative Chambers, 25 Delaware Avenue, 7th Floor, Buffalo, New York.

The purpose of this meeting will be to consider and act upon the following:

- Comm. 3E-1 (2001) regarding *THE EXTENSION OF THE COUNTY'S ONE-PERCENT SALES TAX*.

Thank you.

ATTACHMENTS – 2 (Comm. 3E-1 and Chairman Swanick's letter)

ADJOURNMENT

Item 4 – At this time, there being no further business to transact, the Chairman announced that the Chair would entertain a Motion to Adjourn.

MS. PEOPLES moved that the Legislature adjourn until **2:00 p.m. Thursday, February 1, 2001**. MR. GREENAN seconded.

CARRIED UNANIMOUSLY.

The Chairman declared the Legislature adjourned until **Thursday, February 1, 2001 at 2:00 p.m. Eastern Standard Time**.

LAURIE MANZELLA
CLERK