

§ 1111. Special rules for computing receipts and consideration.

(a)

The retail sales tax imposed under subdivision (a) of section eleven hundred five of this part and the compensating use tax imposed under section eleven hundred ten of this part, when computed in respect to tangible personal property wherever manufactured, processed or assembled and used by such manufacturer, processor or assembler in the regular course of business within this state, shall be based on the price at which items of the same kind of tangible personal property are offered for sale by him, except to the extent otherwise provided in this section or section eleven hundred ten of this part.

(b) Tangible personal property, which has been purchased by a resident of New York state outside of this state for use outside of this state and subsequently becomes subject to the compensating use tax imposed under this article, shall be taxed on the basis of the purchase price of such property, provided, however:

(1) That where a taxpayer affirmatively shows that the property was used outside such state by him for more than six months prior to its use within this state, such property shall be taxed on the basis of current market value of the property at the time of its first use within this state. The value of such property, for compensating use tax purposes, may not exceed its cost.

(2) That the compensating use tax on such tangible personal property brought into this state (other than for complete consumption or for incorporation into real property located in this state) and used in the performance of a contract or sub-contract within this state by a purchaser or user for a period of less than six months may be based, at the option of the taxpayer, on the fair rental value of such property for the period of use within this state.

(c) For the amount and timing of tax in respect to property leased, or sold under a contract deferring payments, see section eleven hundred thirty-two. For the amount and timing of tax in respect to certain leased property, see subdivision (i) of this section.

(d) The commissioner is authorized and empowered to prescribe and, from time to time, to amend schedules of the amount of tax to be collected upon each gallon of motor fuel and diesel motor fuel sold at retail and upon each gallon of such fuel subject to the tax required to be prepaid pursuant to section eleven hundred two of this article or upon each package of cigarettes sold at retail and upon each package of cigarettes subject to the tax required to be prepaid under section eleven hundred three of this article, as the commissioner shall determine is approximately equal to the average rate otherwise applicable, considering the regional average retail sales prices of such fuel, the amount of the prepaid tax per package of cigarettes in accordance with subdivision (j) of this section and, in the case of a sale at retail, the ordinary price ranges for such fuel and cigarettes, in lieu of the regular schedule based on total receipts. Such rates shall be uniform in each county but may vary as between counties,

depending on the general price ranges in effect in each county, but counties wholly within a city shall have a uniform rate. If a political subdivision of a county imposes a retail sales and use tax, separate rates may be prescribed for it. Such schedules with reference to the tax required to be prepaid on motor fuel and diesel motor fuel pursuant to section eleven hundred two of this article or the tax required to be prepaid on cigarettes under section eleven hundred three of this article may fix the rate per gallon or per package of cigarettes in multiples of one-tenth of one cent, depending, in the case of such fuel, on the regional average retail sales prices where such fuel is, as the case may be, imported, manufactured, sold or used. Such schedules with reference to such fuel or cigarettes sold at retail may fix the rate per gallon or per package, as the case may be, in multiples of one-tenth of one cent depending on the price at which such fuel or cigarettes are sold. Where schedules fixing the rate per gallon in multiples of one-tenth of one cent have been promulgated, the price shown on any metered pump or other dispensing device from which such fuel is sold to a purchaser of such fuel, to be delivered directly to a vehicle propelled by any power other than muscular, shall include the tax at the rate so fixed, and the commissioner may by regulation prescribe the manner in which the amount of tax shall be shown for the information of customers by signs or placards on the premises where such fuel is sold. When determining tax required to be collected on the retail sale of motor fuel or diesel motor fuel or cigarettes, the receipts on which tax is computed shall not include the amount of tax required to be prepaid pursuant to section eleven hundred two of this article with respect to such fuel or pursuant to section eleven hundred three of this article with respect to such cigarettes.

(e) (1) There are hereby created and established within the state two regions for purposes of the payment of the tax imposed by section eleven hundred two of this article. (i) One region shall consist of the localities included in the metropolitan commuter transportation district created and established pursuant to section twelve hundred sixty-two of the public authorities law. (ii) The other region shall consist of the area of the state outside the region referred to in subparagraph (i) of this paragraph.

(2) (i) Where the motor fuel is imported, manufactured or sold in, or diesel motor fuel is sold or used in the region referred to in subparagraph (i) of paragraph one of this subdivision, the tax required to be prepaid pursuant to section eleven hundred two of this article on each gallon of such fuel shall be fourteen and three-quarters cents.

(ii) Where motor fuel is imported, manufactured or sold in, or diesel motor fuel is sold or used in the region referred to in subparagraph (ii) of paragraph one of this subdivision, the tax required to be prepaid pursuant to section eleven hundred two of this article on each gallon of such fuel shall be fourteen cents.

(f) The retail sales tax imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten, when computed in respect to a new mobile home, shall be computed on seventy percent of the receipts or consideration given therefor by the purchaser or user.

(g) The sale of race horses made through claiming races within the state, shall be subject to sales tax but only on such portions of the total purchase price that exceed the highest of any prior purchase prices paid for the same horse during the same calendar year within the state. Where no previous purchases have been made within a calendar year, the full purchase price shall be taxable. Officials of all race tracks in the state shall maintain and make available, upon reasonable request, accurate and detailed lists of such sales.

(h) Receipts subject to tax under subdivision (a) of section eleven hundred five on retail sales of cigarettes and tobacco products and consideration given or contracted to be given for cigarettes and tobacco products the uses of which are subject to tax under section eleven hundred ten shall be deemed to include any tax imposed on cigarettes and tobacco products by article twenty of this chapter and any tax imposed on cigarettes by chapter thirteen of title eleven of the administrative code of the city of New York.

(i) (A) Notwithstanding any contrary provisions of this article or other law, with respect to any lease for a term of one year or more of (1) a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, with a gross vehicle weight of ten thousand pounds or less, (2) a vessel, as defined in section twenty-two hundred fifty of such law (including any inboard or outboard motor and any trailer, as defined in section one hundred fifty-six of such law, leased in conjunction with such a vessel) and (3) noncommercial aircraft having a seating capacity of less than twenty passengers and a maximum payload capacity of less than six thousand pounds, or an option to renew such a lease or a similar contractual provision, all receipts due or consideration given or contracted to be given for such property under and for the entire period of such lease, option to renew or similar provision, or combination of them, shall be deemed to have been paid or given and shall be subject to tax, and any such tax due shall be collected, as of the date of first payment under such lease, option to renew or similar provision, or combination of them, or as of the date of registration of such property with the commissioner of motor vehicles, whichever is earlier. Notwithstanding any inconsistent provisions of subdivision (b) of this section or of section eleven hundred seventeen of this article or of other law, for purposes of such a lease, option to renew or similar provision originally entered into outside this state, by a lessee (1) who was a resident of this state, and leased such property for use outside the state and who subsequently brings such property into this state for use here or (2) who was a nonresident and subsequently becomes a resident and brings the property into this state for use here, any remaining receipts due or consideration to be given after such lessee brings such property into this state shall be subject to tax as if the lessee had entered into or exercised such lease, option to renew or similar provision, or combination thereof, for the first time in this state and the relevant provisions of sections eleven hundred ten concerning imposition and computation of tax, eleven hundred eighteen concerning exemption from use tax for tax paid to another jurisdiction, eleven hundred thirty-two concerning presumption of taxability and conditions for registration and eleven hundred

thirty-nine concerning refunds, of this article, shall be applicable to any sales or compensating use tax paid by the lessee before the lessee brought the property into this state, except to the extent that any such provision is inconsistent with a provision of this subdivision. For purposes of this subdivision, (1) a lease for a term of one year or more shall include any lease for a shorter term which includes an option to renew or other like provision (or more than one of such option or other provision) where the cumulative period that the lease, with or without such option or provision, may be in effect upon exercise of such option or provision is one year or more and (2) receipts due and consideration given or contracted to be given under any such lease or other provision for excess mileage charges shall be subject to tax as and when paid or due.

(B) Notwithstanding any inconsistent provisions of this subdivision, with respect to a lease of a motor vehicle described in paragraph (A) of this subdivision for a term of one year or more (1) which includes an indeterminate number of options to renew or other similar contractual provisions or which includes thirty-six or more monthly options to renew beyond the initial term, and (2) under which lease the lessee of such motor vehicle has certified in the writing described in clause (i) of subparagraph (C) of paragraph two of subsection (h) of section 7701 of the internal revenue code of 1986, under penalty of perjury, that the lessee intends that more than fifty percent of the use of such vehicle is to be in a trade or business of the lessee, all receipts due or consideration given or contracted to be given under such lease for the first thirty-two months, or the period of the initial term if greater, of such lease shall be deemed to have been paid or given and shall be subject to tax in accordance with the provisions of this subdivision. For each such option to renew, or similar provision, or combination of them, exercised after the first thirty-two months, or the period of such initial term, if longer, of any such lease, tax due under this article shall be collected and paid or paid over without regard to this subdivision.

(C) Any receipts due or consideration given or contracted to be given under an option to renew a lease of a motor vehicle described in this subdivision or similar contractual provision, or combination of them, exercised as part of any such lease between the same lessor and the same lessee with respect to the same motor vehicle or vehicles, where such lease or any option to renew such a lease or any other similar contractual provision was subject to tax in accordance with the provisions of this subdivision, shall not be subject to the tax imposed under the provisions of article twenty-eight-A of this chapter.

(j) (1) The tax required to be prepaid pursuant to section eleven hundred three of this article shall be computed by multiplying the base retail price by a tax rate of eight percent and rounding the result thereof to the nearest whole cent per package.

(2) For purposes of this subdivision, the base retail price shall mean for the period September first, nineteen hundred ninety-five, through August thirty-first, nineteen hundred ninety-six, one dollar for each package of cigarettes containing ten cigarettes or fraction thereof, and two dollars for each package of cigarettes containing twenty cigarettes

or fraction thereof in excess of ten and, if a package contains more than twenty cigarettes, the base retail price shall be increased by fifty cents for each five cigarettes or fraction thereof in excess of twenty. Effective for the twelve-month period commencing on the first day of September of each year, the base retail price for any such package shall be adjusted as follows: As soon as practicable after June first of each year, the base retail price in effect for the twelve-month period commencing on the immediately preceding September first shall be multiplied by a fraction, the numerator of which is the total of the sums of the manufacturers' list price for a carton of standard brand cigarettes containing ten packages of twenty cigarettes and the amount of cigarette tax imposed by subdivision one of section four hundred seventy-one of this chapter on such a carton of cigarettes, in effect on the first day of each month, for each of the twelve consecutive months ending with such month of June, and the denominator of which is the total of the sums of the manufacturers' list price for such a carton of cigarettes and the amount of cigarette tax imposed by subdivision one of section four hundred seventy-one of this chapter on such a carton of cigarettes, in effect on the first day of each month, for each of the twelve consecutive months ending with the month of June of the immediately preceding year. Provided, however, for purposes of the adjustment to any such base retail price required for the period commencing September first, two thousand two, the denominator shall be such total with respect to the twelve consecutive months ending with the month of June, nineteen hundred ninety-seven. The manufacturers' list price for a carton of standard brand cigarettes containing ten packages of twenty cigarettes in effect on the first day of a month shall be determined by calculating a weighted average of each of the major manufacturer's list prices for such a carton of cigarettes in effect on the first day of such month, as such list prices are reported to the department by such manufacturers, in the department's determination of the cost of cigarettes under article twenty-A of this chapter, and using the most recently published annual national market shares of such major manufacturers. The commissioner shall cause to be published in the section for miscellaneous notices in the state register, and give other appropriate general notice of, the base retail price adjustment calculation and the resulting base retail price fixed by this section for the period commencing September first of each year beginning September first, nineteen hundred ninety-six, no later than the immediately preceding first day of August. The calculation and publication of the base retail price so fixed by provisions of this section shall not be included within the definition of "rule" as defined in paragraph (a) of subdivision two of section one hundred two of the state administrative procedure act. The base retail prices determined pursuant to this paragraph shall be rounded to the nearest one-tenth of one cent for each package containing ten cigarettes or fraction thereof, for each package containing twenty cigarettes and, if packages are sold in excess of twenty cigarettes and stamps have been issued therefor, for each such package.

(k) Receipts subject to tax under subdivision (a) of section eleven hundred five of this article on retail sales of motor fuel, diesel motor

fuel and residual petroleum product, and consideration given or contracted to be given for motor fuel, diesel motor fuel and residual petroleum product, the uses of which are subject to tax under section eleven hundred ten of this article, shall be deemed to include any tax imposed on or with respect to motor fuel, diesel motor fuel or residual petroleum product under article thirteen-A of this chapter.

(l) (1) Receipts from the sale of mobile telecommunications service provided by a home service provider shall include "charges for mobile telecommunications services." Such term shall mean any charge by a home service provider to its mobile telecommunications customer for (A) commercial mobile radio service, and shall include property and services that are ancillary to the provision of commercial mobile radio service (such as dial tone, voice service, directory information, call forwarding, caller-identification and call-waiting), and (B) any service and property provided therewith.

(2) With respect to services or property described in subparagraph (B) of paragraph one of this subdivision, internet access service, any mobile telecommunications service which the mobile telecommunications customer originates in a foreign country to the extent included in the fixed periodic charge, any interstate or international telephony or telegraphy or telephone or telegraph service of whatever nature which is not a voice service, and any property or service which is not telephony or telegraphy or telephone or telegraph service of whatever nature, a home service provider shall collect and pay over tax, and a mobile telecommunications customer shall pay such tax, on receipts from any charge that is aggregated with and not separately stated from other charges for mobile telecommunications service. Provided, however, if such home service provider uses an objective, reasonable and verifiable standard for identifying each of the components of the charge for mobile telecommunications service, then such home service provider may separately account for and quantify the amount of each such component charge. If a home service provider chooses to so separately account for and quantify and separately sells any such property or service, then the charge for such property or service shall be based upon the price for such property or service as separately sold. If a home service provider chooses to so separately account for and quantify and does not separately sell such property or service, then the charge for such property or service shall be based upon the prevailing retail price of comparable property or service sold separately by other home service providers. In any case, the charge for such property or service shall be reasonable and proportionate to the total charge to the mobile telecommunications customer. Such charges for such services or property, as the case may be, will not constitute receipts from charges for mobile telecommunications services subject to tax under subdivision (b) of section eleven hundred five of this article. Nothing herein shall be construed to exempt from tax or subject to tax any such service or property otherwise subject to tax or exempt from tax under this article.

(3) (A) Any charge for a service or property billed by or for a mobile telecommunications customer's home service provider shall be deemed to be provided by such mobile telecommunications customer's home service provider.

(B) Charges for mobile telecommunications service that are provided or deemed to be provided by a mobile telecommunications customer's home service provider shall be sourced to the taxing jurisdiction where the mobile telecommunications customer's place of primary use is located, regardless of where the mobile telecommunications service originates, terminates or passes through.

(m) Notwithstanding any provision of law to the contrary:

(1) The sales tax imposed by subdivision (a) of section eleven hundred five of this article and the compensating use tax imposed by section eleven hundred ten of this article, in regard to retail sales of motor fuel and diesel motor fuel, shall be eight cents per gallon.

(2) The sales and compensating use taxes imposed by subdivision (a) of section eleven hundred nine of this article, in regard to retail sales of motor fuel and diesel motor fuel, shall be three-quarters of one cent per gallon.

(3) Paragraph one of this subdivision shall not apply to the sales and compensating use taxes imposed by subdivision (a) of section eleven hundred seven of this article in regard to retail sales of motor fuel and diesel motor fuel. However, the legislative body of a city in which the taxes imposed by such section eleven hundred seven are in effect, by local law, ordinance, or resolution in exactly the form prepared by the commissioner, may elect that such taxes, in regard to retail sales of motor fuel and diesel motor fuel, shall be computed, as determined by the commissioner, at a rate of cents per gallon, rounded to the nearest cent, equal to two or three dollars, as determined by the municipality, multiplied by the percentage rate of such taxes within the municipality.

(4) Paragraph one of this subdivision shall not apply to the sales and compensating use taxes imposed by a local law, ordinance or resolution of a municipality pursuant to the authority of subpart B of part one of article twenty-nine of this chapter, in regard to retail sales of motor fuel and diesel motor fuel. The legislative body of such a municipality, by local law, ordinance or resolution in exactly the form prepared by the commissioner, may elect that its sales and compensating use taxes, in regard to the retail sale of motor fuel and diesel motor fuel, shall be computed, as determined by the commissioner, at a rate of cents per gallon, rounded to the nearest cent, equal to two or three dollars, as determined by the municipality, multiplied by the percentage rate of such taxes within the municipality.

(5)(i) Prior to the start of any sales tax quarter, the commissioner shall apply the local percentage sales tax rate of each county or city that has elected a cents per gallon rate pursuant to paragraph three or four of this subdivision to the average price of motor fuel and diesel motor fuel, not including sales tax and the motor fuel excise tax, for three consecutive months beginning four months prior to the start of any sales tax quarter. If the result of this computation is less than the elected cents per gallon rate for a county or city, the cents per gallon rate for such county or city shall be adjusted to be equal to such computation, rounded to the nearest one cent. Such rates shall be published by the commissioner and effective in the next succeeding sales tax quarter.

(ii) Prior to the start of any sales tax quarter, the commissioner

shall also adjust in a like manner the cents per gallon rates prescribed by paragraphs one and two of this subdivision based on percentage sales tax rates of four percent and three-eighths of a percent respectively. Provided, however, adjustments made to the cents per gallon rate prescribed by paragraph two of this subdivision shall be rounded to the nearest one-tenth of one cent.

(6) A local law, ordinance or resolution making or revoking the election made pursuant to paragraph three or four of this subdivision must go into effect in accordance with the provisions of subdivisions (d) and (e) of section twelve hundred ten of this chapter.

(7) Notwithstanding any foregoing provision of this subdivision or other law to the contrary, this subdivision, subdivision (h) of section eleven hundred nine of this part and subdivision (n) of section eighteen hundred seventeen of this chapter, section three hundred ninety-two-i of the general business law and other provisions of law which refer or relate to this subdivision shall apply only to (A) motor fuel or diesel motor fuel sold for use directly and exclusively in the engine of a motor vehicle and (B) motor fuel or diesel motor fuel, other than water-white kerosene sold exclusively for heating purposes in containers of no more than twenty gallons, sold by a retail gas station. For purposes of this subdivision and such other provisions of law, "retail gas station" shall mean a filling station where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a motor vehicle to be consumed in the operation of such motor vehicle or where such fuel is stored primarily for sale by delivery directly into the ordinary fuel tank connected with the engine of a vessel to be consumed in the operation of such vessel. The commissioner is hereby authorized to require the use of certificates or other documents, and procedures related thereto, to effect the purposes of this subdivision; and any such certificate or other document so required by the commissioner for a purchaser to tender to a vendor to purchase such fuel subject to tax on the reduced base established by or pursuant to this subdivision is hereby deemed to be an exemption certificate as such term is used in subdivision (c) of section eleven hundred thirty-two of this article and as if the provisions of such subdivision (c) referred to such a certificate or document required pursuant to this subdivision.

* (n) The sales and compensating use taxes imposed by this article and pursuant to the authority of article twenty-nine of this chapter on B20 shall be imposed at eighty percent of the rate of the cents per gallon taxes described in subdivision (m) of this section. However, if a county or city does not make the cents per gallon election authorized by such subdivision (m), the taxes of such county or city imposed pursuant to the authority of such article twenty-nine or the taxes imposed in a city of one million or more by section eleven hundred seven of this article shall be imposed on eighty percent of the receipts from the retail sale of or the consideration given or contracted to be given for, or for the use of, such B20.

* NB Repealed September 1, 2012

(o) (1) If a transportation service subject to tax under paragraph ten of subdivision (c) of section eleven hundred five of this part is

provided by vehicle, and the owner or lessor of the vehicle leases or rents the vehicle to an unrelated person who provides the transportation service, such as a limousine driver who drives a limousine owned by another person, then (i) the owner or lessor is deemed to provide the transportation service during the day or other period that the unrelated person uses the vehicle to provide the service, (ii) the owner or lessor is deemed to be the vendor of the service provided by the unrelated person, (iii) the tax imposed by such paragraph ten is deemed to be imposed on the unrelated person, (iv) the owner or lessor, as vendor, must collect the tax from the unrelated person, based on the local jurisdiction where the driver takes delivery of the vehicle and pay over such tax required to be collected with its returns required to be filed under this article, and (v) the receipts subject to the tax equal two hundred percent of the amount that the owner or lessor charges the unrelated person for the use of the vehicle during the day or other period, including any charge related to insurance, maintenance, repairs, fuel, the use, rental or economic value of any vehicle or business license, and any other charge made by the owner or lessor to the unrelated person for the day or other period, regardless of whether the unrelated person transported, carried or conveyed any person or earned any fares with that vehicle during that day or other period.

(2) Notwithstanding any law to the contrary:

(i) Any municipality or public corporation that establishes or regulates black car, limousine or other vehicle service fares must adjust those fares to include therein the tax imposed by paragraph ten of subdivision (c) of section eleven hundred five of this part and the taxes imposed by other sections of this part and pursuant to the authority of article twenty-nine of this chapter on the services taxed by such paragraph ten and must require that any meters or other devices in the vehicles or otherwise that measure fares be adjusted to include these taxes, as the same are from time to time imposed and as the rates of those taxes may change.

(ii) Any person that sells the services described in paragraph one of this subdivision must adjust any meters or other devices in the vehicles or otherwise that measure fares so that they timely reflect any change in the rates of the taxes described in subparagraph (i) of this paragraph. Neither the failure of a municipal or other public corporation to adjust fares nor the failure of any person to adjust the meters or devices will relieve any person from the obligation to collect and pay or pay over such taxes timely, at the correct combined rate.

(3) For purposes of this subdivision, "unrelated person" means a person other than a related person as defined for purposes of section fourteen of this chapter.

(p) Notwithstanding any contrary provision of law: (1) The sales tax imposed by subdivision (a) of section eleven hundred five of this part on receipts from the retail sale of a new modular home module shall be computed on the sum of (i) sixty percent of the vendor's receipts from the sale of the module, excluding any charges by the vendor to the purchaser for shipping or delivery, as described in paragraph three of subdivision (b) of section eleven hundred one of this article and (ii) one hundred percent of any charges by the vendor to the purchaser for

shipping or delivery of the modules as described in such paragraph three of subdivision (b) of section eleven hundred one.

(2) The compensating use tax imposed by clause (A) of subdivision (a) of section eleven hundred ten of this part on the use of a new modular home module by its purchaser shall be computed on the sum of (i) sixty percent of the amount described in subdivision (b) of such section eleven hundred ten, excluding any charges for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one of this article, and (ii) one hundred percent of any charges for shipping or delivery as described in such paragraph three of subdivision (b) of section eleven hundred one.

(3) The compensating use tax imposed by subclause (i) or (ii) of clause (B) of subdivision (a) of section eleven hundred ten of this part on the use of modular home modules by their manufacturer to be installed at a building site to construct a modular home that constitutes a capital improvement shall be computed on the sum of (i) sixty percent of the consideration for which the manufacturer conveys those modules to the modular home buyer on an installed basis, excluding any consideration for shipping or delivery as described in paragraph three of subdivision (b) of section eleven hundred one of this article, and excluding the consideration for the installation of those modules at the building site as a modular home if such installation charge is reasonable and stated separately from every other charge, and (ii) one hundred percent of any charges for shipping or delivery as described in such paragraph three of subdivision (b) of section eleven hundred one.

(q) (1) The exclusions from the definition of retail sale in subparagraph (iv) of paragraph four of subdivision (b) of section eleven hundred one of this article shall not apply to transfers, distributions, or contributions of an aircraft or vessel, except where, in the case of the exclusion in subclause (I) of clause (A) of such subparagraph (iv), the two corporations to be merged or consolidated are not affiliated persons with respect to each other. For purposes of this subdivision, corporations are affiliated persons with respect to each other where (i) more than five percent of their combined shares are owned by members of the same family, as defined by paragraph four of subsection (c) of section two hundred sixty-seven of the internal revenue code of nineteen hundred eighty-six; (ii) one of the corporations has an ownership interest of more than five percent, whether direct or indirect, in the other; or (iii) another person or a group of other persons that are affiliated persons with respect to each other hold an ownership interest of more than five percent, whether direct or indirect, in each of the corporations.

(2) Notwithstanding any contrary provision of law, in relation to any transfer, distribution, or contribution of an aircraft or vessel that qualifies as a retail sale as a result of paragraph one of this subdivision, the sales tax imposed by subdivision (a) of section eleven hundred five of this part shall be computed based on the price at which the seller purchased the tangible personal property, provided that where the seller or purchaser affirmatively shows that the seller owned the property for six months prior to making the transfer, distribution or contribution covered by paragraph one of this subdivision, such aircraft

or vessel shall be taxed on the basis of the current market value of the aircraft or vessel at the time of that transfer, distribution, or contribution. For the purposes of the prior sentence, "current market value" shall not exceed the cost of the aircraft or vessel. See subdivision (b) of this section for a similar rule on the computation of any compensating use tax due under section eleven hundred ten of this part on such transfers, distributions, or contributions.

(3) A purchaser of an aircraft or vessel covered by paragraph one of this subdivision will be entitled to a refund or credit against the sales or compensating use tax due as a result of a transfer, distribution, or contribution of such aircraft or vessel in the amount of any sales or use tax paid to this state or any other state on the seller's purchase or use of the aircraft or vessel so transferred, distributed or contributed, but not to exceed the tax due on the transfer, distribution, or contribution of the aircraft or vessel or on the purchaser's use in the state of the aircraft or vessel so transferred, distributed or contributed. An application for a refund or credit under this subdivision must be filed and shall be in such form as the commissioner may prescribe. Where an application for credit has been filed, the applicant may immediately take such credit on the return which is due coincident with or immediately subsequent to the time the application for credit is filed. However, the taking of the credit on the return shall be deemed to be part of the application for credit. Provided that the commissioner may, in his or her discretion and notwithstanding any other law, waive the application requirement for any or all classes of persons where the amount of the credit or refund is equal to the amount of the tax due from the purchaser. The provisions of subdivisions (a), (b), and (c) of section eleven hundred thirty-nine of this article shall apply to applications for refund or credit under this subdivision. No interest shall be allowed or paid on any refund made or credit allowed under this subdivision. If a refund is granted or a credit allowed under this paragraph, the seller or purchaser shall not be eligible for a refund or credit pursuant to subdivision seven of section eleven hundred eighteen of this article with regard to the same purchase or use.