

# NEW RULING MAKES A SPLASH -- FEES TO USE A BATHROOM ARE NOT SUBJECT TO SALES TAX

*Hodgson Russ Newsletter*  
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A new advisory opinion issued by the New York State Department of Taxation and Finance should make all New York taxpayers flushed with pride – access to toilets is not subject to tax. The case involved a new software application for smartphones that allows users to purchase a ticket for access to a nearby bathroom facility. While the software is free, users will be charged a \$1 or \$2 fee for a ticket to use the facilities. The fee will be paid through the app and the app developer will pay a portion to participating locations after the ticket is used.

In an effort to wipe away any ambiguities, the Tax Department explained that the initial download of the software would be subject to sales tax as “canned software” if there had been a cost associated with the download. However, since the app is free, there is nothing to tax. More importantly, the charge for bathroom access is also exempt from tax since the use of such facilities is not an enumerated service subject to tax.

The decision is expected to bring relief to many taxpayers.