

**A GUIDE
TO
SALES TAX
IN
NEW YORK
STATE**

About this publication

Publication 750 is a guide to New York State and local sales and use taxes.

This publication will assist you in deciding whether or not you are required to register as a vendor for New York State sales tax purposes. If you are a farmer, contractor, or manufacturer, for example, this publication will help you determine whether you must apply to register as a vendor with the Tax Department. As used in this publication and for purposes of the Tax Department's registration rules, the term *vendor* includes persons required to collect sales tax on sales and transactions described in Part II, *Making sales*. Also, when used in this publication, the terms *sales*, *purchases*, *taxable sales*, and *taxable purchases*, include, but are not limited to, where appropriate, rentals of hotel rooms, admissions to places of amusement, dues paid to social or athletic clubs, and charges of a roof garden, cabaret, or other similar place.

Once you are registered as a vendor, you are responsible for collecting and remitting both state and local sales taxes to the Tax Department, along with any compensating use tax you may owe. This publication, therefore, includes information about local sales and use taxes, as well as New York State sales and use taxes.

Although this publication explains many aspects of these taxes, every situation that could occur is not covered. For example, the sale of items through vending machines is not addressed in this publication. If you have any questions about sales and use tax, please contact us. See the *Need help?* section on the back cover of this publication.

In addition to being required to apply to become a registered vendor for sales tax purposes, you may also be subject to the registration, collection, or payment requirements of other taxes. For a more detailed description of these taxes, see Publication 20, *New York State Tax Guide for New Businesses*.

Although accurate, the information in this publication has been simplified. If there is any discrepancy between it and the Tax Law or regulations, the Tax Law and regulations will govern.

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Part I – Registration

Who must be a registered vendor

You must be registered as a vendor with the Tax Department if you will be making sales of tangible personal property or services on which you are required to collect sales tax

If you will be making sales in New York State that are subject to sales tax, you may be required to collect the sales tax from the person to whom you make the sale. (The discussion on page 17 under *Taxable sales* will help you in determining whether the sales you will be making are subject to sales tax.) In general, the sales tax you must collect and remit is computed using the combined state and local rate in effect in the locality where you deliver the taxable product or service. See page 21 of this publication for information on the collection of tax on sales of motor vehicles and vessels.

You must also be registered as a vendor to issue or accept most New York State sales tax exemption certificates

If you must collect sales tax on the sales you make, then you must register as a vendor with the Tax Department and obtain a *Certificate of Authority* (see page 9). You must also be registered as a vendor to issue or accept most New York State sales tax exemption documents. For example, even though wholesalers may never collect sales tax because all of their purchases and sales are for resale (and, therefore, are eligible for exemption from sales tax), they must still be registered to legally issue and accept most exemption documents.

If you engage in business without obtaining a valid Certificate of Authority, you will be subject to a substantial penalty

If you are required to register as a vendor but fail to do so and you engage in business without having obtained a valid *Certificate of Authority*, you will be subject to a penalty. The maximum penalty for engaging in business without obtaining a valid *Certificate of Authority* is \$10,000, imposed at the rate of up to \$500 for the first day business is conducted without having obtained a valid *Certificate of Authority*, plus up to \$200 per day for each day thereafter.

If you are changing your organizational structure, you must register as a new business

If you change your organizational structure (for example, from a sole proprietorship to a corporation, a limited liability company, or a partnership), the new organization must register as a vendor and obtain a new *Certificate of Authority*. The new business must obtain its own *Certificate of Authority* before it begins operating. You must also file a final return for your existing business and surrender the *Certificate of Authority* that was issued to the existing business.

Purchasing an existing business

If you are purchasing either part or all of the assets of an existing business, there are specific rules that apply to the transaction (see page 38).

Rules for out of state businesses

Even though you are located in another state, if you have customers in New York State, you may be considered a vendor for New York State sales tax purposes

Even though you are located outside of New York State, if you have customers in New York State, you may be required to register as a vendor for New York State and local sales tax purposes, if you have sufficient connection with New York State. For example, if you are located outside New York State, make sales of taxable products to persons within New York State, and regularly deliver the products in your trucks to your New York State customers, you have sufficient connection with New York State and must register as a vendor and collect and remit sales tax. Also, if you solicit sales of taxable products or services through employees, salespersons, independent agents, or service representatives located in New York State, you must register as a vendor for New York State sales tax purposes.

If the only connection you have with New York State is the delivery of your products into the state by U.S. Postal Service or common carrier, you are not required to register or collect sales tax. Thus, some out of state businesses (including some mail order companies) may not have sufficient connection with New York State to be required to collect and remit sales tax.

Although, as an out of state business, you may not be required to collect sales tax from your customers in New York State, your customers are still responsible for the tax on their purchases. The use tax complements the sales tax; one of the times it applies is when a New York resident purchases taxable products or services outside of New York State and then brings them into New York for use here. For more information, please see Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department: Questions and Answers*.

Although you may not have sufficient connection with New York State to require you to be registered, you may voluntarily register as a vendor to collect and remit the sales tax that is otherwise due from the purchaser. You will then have the same obligations as vendors that are required to register with the Tax Department.

If you are required to register as a vendor, or if you voluntarily register, you must collect sales tax on all your taxable sales delivered by you, or for you, to the purchaser, or the purchaser's designee, in this state. The tax due is the combined state and local rate in effect in the locality where the taxable product or service is delivered.

About your *Certificate of Authority*

Your Certificate of Authority authorizes you to collect sales tax on your taxable sales and to issue and accept most New York State sales tax exemption certificates

Your *Certificate of Authority* authorizes you to collect sales tax on your taxable sales and to issue and accept most New York State sales tax exemption certificates. Exemption certificates are forms that are filled out by a purchaser and given to the seller, so that the seller has a record of why sales tax was not required to be collected on the sale to which the certificate relates.

Once you receive your *Certificate of Authority*, you are considered to be in business for sales tax purposes even if you never make a sale or never open the doors of your establishment. Therefore, it is important that you file your sales tax returns on time, even if you did not have any taxable sales during the reporting period, to avoid being subject to penalties for not filing.

You must prominently display your Certificate of Authority at your place of business

You must prominently display your *Certificate of Authority* at your place of business. If you have no permanent physical location, you can attach it to your truck, cart, wagon, stand, or other vehicle or facility from which you conduct business.

Your Certificate of Authority is not transferable

Your *Certificate of Authority* is not transferable or assignable. If you buy an ongoing business, you must apply for your own certificate. (See page 38 for additional information on the rules regarding the purchase of a business.) If you sell your business or cease doing business, you must surrender your *Certificate of Authority* to the Tax Department. Complete the back of the certificate as indicated and send it with your final return to the address shown on the return.

Although your *Certificate of Authority* is not transferable or assignable, it may be amended to account for changes in the address of the business or business name.

You will not have to renew your *Certificate of Authority* unless you are notified to do so by the Tax Department.

Types of *Certificates of Authority*

The Tax Department issues three types of certificates of authority for sales tax purposes

The Tax Department issues three types of *Certificates of Authority* for sales tax purposes:

- regular
- show/entertainment and
- temporary

The type of *Certificate of Authority* you apply for should be based on the type of business you will engage in and the anticipated duration of your business activities.

Regular Certificate of Authority

You should apply for a regular *Certificate of Authority* if you will be making taxable sales from your home, a shop, a store, a cart, a stand, or any other facility or facilities from which you regularly conduct your business. It does not matter whether you own or rent the facility.

You should apply for a regular *Certificate of Authority* if you sell at shows or entertainment events and also regularly make sales other than at a show or entertainment event (for example, you make sales from a permanent location). You can use a regular *Certificate of Authority* at both your permanent location and at shows and entertainment events. You may not use photocopies of *Certificates of Authority*, but you may request duplicate originals of your *Certificate of Authority*. You may request duplicate originals by attaching a separate note to your application stating the number of additional *Certificates of Authority* you want or, if you have already received your *Certificate of Authority*, you may call or write us and request duplicate originals. (See the *Need help?* section on the back cover of this publication.)

You must apply for a regular Certificate of Authority at least 20 days before you begin operating your business in New York State.

Certificate of Authority for Show and Entertainment Vendors

You should apply for a *Certificate of Authority for Show and Entertainment Vendors* if your only business activities in the state will be operating as a show or an entertainment vendor. The *Certificate of Authority for Show and Entertainment Vendors* is issued and is valid for the current calendar year only. If you file your sales tax returns on time and pay the amount of sales tax due, the Tax Department will automatically renew your *Certificate of Authority for Show and Entertainment Vendors* for the next calendar year.

Show vendors

You are a show vendor if you display tangible personal property for sale or make taxable sales of tangible personal property or services at a show at which more than one vendor displays items for sale, or makes taxable sales of tangible personal property or services. The term *show* includes, but is not limited to, flea markets, craft shows, antique shows, coin shows, stamp shows, comic book shows, fairs and similar shows, whether the show is a regular or temporary event.

Entertainment vendors

You are an entertainment vendor if you only conduct business at an entertainment event being held in this state at which you display tangible personal property for sale, or make sales of tangible personal property that are subject to sales tax at that event.

The term *entertainment event* includes, but is not limited to: dance performances or theatrical productions; athletic contests or exhibitions (other than an amateur sports competition); folk, rock, pop, symphony, or other music concerts; dramatic plays or musical shows; carnivals or circus performances; rodeos; stand-up comedy acts; beauty pageants; boxing or wrestling matches or exhibitions; body building or weight lifting competitions; auto races; drag races; tractor pulls; roller derbies;

mud wrestling; track meets; horse shows; dog shows; golf tournaments; tennis tournaments; and other similar forms of entertainment. A baseball game or other professional team sporting event will be considered an entertainment event if in a yearly period at least one of the participating teams has played four or fewer games at the same facility. In addition, in order to be an entertainment event, the facility where such event is held must have an attendance capacity of greater than 1,000 persons.

The term *entertainment event* does not include events such as high school or college athletic games, little league games, or festivals featuring amateur sporting events. In the case of concerts, plays, shows or other similar forms of entertainment, the term *entertainment event* does not include an event that consists of more than three performances by the same person or persons during a weekly period at the same facility or site. In the case of an athletic contest or exhibition, the term *entertainment event* does not include such competition between teams when at least one of the participating teams compete at the same facility or site more than four times a year. For example, a professional baseball, football, basketball, or hockey game is not considered to be an entertainment event if at least one of the teams participating in the competition plays a regular schedule of more than four events at the facility where the event is held.

You must apply for a Certificate of Authority for Show and Entertainment Vendors at least 20 days before your first scheduled show or entertainment event in New York State.

Temporary Certificate of Authority

You may apply for a temporary *Certificate of Authority* if you expect to make taxable sales in New York State for no more than two consecutive quarterly sales tax periods in any 12-month period. In determining whether you meet this criteria, keep in mind that the sales tax quarters are: March 1 through May 31, June 1 through August 31, September 1 through November 30, and December 1 through February 28 (February 29 in a leap year). However, even if you are eligible to obtain a temporary *Certificate of Authority*, it may be to your benefit to apply for a regular *Certificate of Authority*. That is because a temporary *Certificate of Authority* is only good for the two consecutive quarterly sales tax periods listed on your application and on your temporary *Certificate of Authority*. If you operate a business during the next 12-month period, you must again apply for a new temporary *Certificate of Authority* at least 20 days before you resume doing business.

For example, if you sell Christmas trees in November and December, and your taxable sales consist only of sales during this period, you are eligible to apply for a temporary *Certificate of Authority*. However, if you are involved in this type of business activity every year, you may apply for a regular *Certificate of Authority*. This could be to your benefit, because you would then not have to apply every year for a new

temporary *Certificate of Authority*, as the regular *Certificate of Authority* would continue to be in effect until you indicate that you are no longer doing business by filing a final return. However, once you receive a regular *Certificate of Authority* you must file sales and use tax returns even if you have no sales tax liability. Also, even if you file a final return, and subsequently change your plans, you may apply for reactivation of your regular *Certificate of Authority* simply by calling 1 800 972-1233 (as long as it is within one year of deactivation).

Consider, for example, a person who has no consistent year-to-year sales activity in New York State. In 2003, this person sold costume jewelry from a kiosk in the common area of a mall from October through December. This was this person's only business activity in New York State in 2003. The person did not anticipate doing business in New York State in 2004. The person in this example should apply for a temporary *Certificate of Authority*.

Next, consider the example of a person who will be selling crafts at a farmers' market for seven months, from the beginning of April through the end of October. This seven-month period covers three consecutive quarterly sales tax periods: March through May, June through August, and September through November. This person may not register as a temporary vendor. He or she must apply for either a regular *Certificate of Authority*, or a *Certificate of Authority for Show and Entertainment Vendors*.

You must apply for a temporary Certificate of Authority at least 20 days before you begin operating your business.

How to obtain your *Certificate of Authority*

To obtain a *Certificate of Authority*, fill out Form DTF-17, *Application for Registration as a Sales Tax Vendor*, for your business and send it to the address listed in the instructions for that form, at least 20 days before you begin operating your business.

You may obtain a copy of the application form from the Tax Department's Web site or by contacting us. See the *Need help?* section on the back cover of this publication.

The Tax Department will review your application. If the application is approved, we will mail you a *Certificate of Authority*. You cannot legally make taxable sales or issue or accept most exemption certificates until you have received your valid *Certificate of Authority*. If you listed several places of business on Form DTF-17-ATT, *Schedule of Business Locations For a Consolidated Filer*, the Tax Department will provide you with a valid *Certificate of Authority* for each location.

Denial of a *Certificate of Authority*

The Tax Department may deny your request for a Certificate of Authority

The Tax Department may deny your request for a *Certificate of Authority* under certain circumstances. For example, if any tax imposed under the Tax Law has been finally determined to be due from you and that tax liability has not been paid, your application for a *Certificate of Authority* may be denied. Remember that you cannot legally make taxable sales or issue or accept most New York State exemption certificates until you receive a valid *Certificate of Authority*.

Within 90 days of receiving notice that your application for a Certificate of Authority has been denied, you may file either a request for a conference, or a petition for a hearing

If your application for a *Certificate of Authority* is denied, we will send you a *Notice of Proposed Refusal to Register* by certified mail within five days of the date we receive your application. The *Notice of Proposed Refusal to Register* will state the basis for such proposed refusal. If you believe that the Tax Department has made a mistake, you should file a request for a conference with the Bureau of Conciliation and Mediation Services, or file a petition for a hearing with the Division of Tax Appeals. You must file the application for a conference or hearing within 90 days of the date of the *Notice of Proposed Refusal to Register*, otherwise the *Notice of Proposed Refusal to Register* shall become final. Once the *Notice of Proposed Refusal to Register* becomes final you are prohibited from engaging in any business in New York State for which a *Certificate of Authority* is required.

Conciliation conference

You may request a conciliation conference through the Bureau of Conciliation and Mediation Services. The conference is conducted informally by a conferee who issues an order that is binding on the Tax Department, but not on you. (You may appeal the order by filing a petition for a formal hearing with the Division of Tax Appeals, as explained below.)

To set up a conference, file Form CMS-1, *Request for Conciliation Conference*, which is included with the *Notice of Proposed Refusal to Register* you receive. You may also obtain this form by calling toll free 1 800 462-8100, or by writing to the Bureau of Conciliation and Mediation Services, NYS Tax Department, W A Harriman Campus, Albany NY 12227.

Hearing with the Division of Tax Appeals

You may file a petition with the Division of Tax Appeals for a hearing before an administrative law judge. Both you and the Tax Department have the right to appeal the administrative law judge's decision to the Tax Appeals Tribunal. You may obtain petition forms by visiting the Tribunal's Web site at www.nysdta.org, by calling the Tribunal at (518) 266-3000, or by writing to the Division of Tax Appeals, Riverfront Professional Tower, 500 Federal Street, 4th Floor, Troy NY 12180-2894.

The Tax Department cannot seek a review of the Tribunal's decision. You, however, can seek a review by instituting an Article 78 proceeding in the Appellate Division of the New York State Supreme Court.

Powers of Attorney

Regardless of which appeal option you choose, you may appear on your own behalf or have an authorized representative present your case for review. An authorized representative must have power of attorney from you on file with the office in which the matter is pending, in order to appear on your behalf.

Taxpayers' Bill of Rights

The Taxpayers' Bill of Rights requires the Tax Department to advise you, in writing, of your rights to appeal a departmental decision

New York State has a *Taxpayers' Bill of Rights* that enhances and formalizes your rights as a New York State taxpayer. In part, the Bill of Rights requires the Tax Department to advise you, in writing, of your rights to appeal a departmental decision. For more information on your rights, call or write us. See the *Need help?* section on the back cover of this publication. See Publication 38, *Your Rights as a Taxpayer*.

New Jersey and Connecticut sales tax agreements

A simplified tax reporting program is part of separate agreements entered into between New York State and New Jersey, and New York State and Connecticut

A simplified sales tax reporting program is part of separate agreements entered into between New York State and the State of New Jersey, and New York State and the State of Connecticut.

Under the simplified tax reporting program, New York State vendors who have no business location in New Jersey or Connecticut, but who make taxable sales of tangible personal property or services that are delivered to persons in New Jersey or Connecticut, may collect the New Jersey or Connecticut sales tax due on those sales. The agreement between the states also permits the states to actively exchange sales and use tax information.

Registering for the program

Vendors who participate in the program register with both their home state, and the state(s) for which they wish to collect sales tax. The vendor files a single sales tax return with the home state, along with a combined payment of all sales taxes collected and a breakdown of how much tax was collected on behalf of each state. The home state will, on the vendor's behalf, send the taxes due the other state(s) to that state(s). For more information on registering for the New Jersey or Connecticut programs, see Publication 32, *New Jersey/New York Cooperative Interstate Sales and Use Tax Administration*, (New Jersey) or Publication 904, *Connecticut/New York State Cooperative Interstate Sales and Use Tax Administration*, (Connecticut).

Registration rules for farmers

A farmer is not required to register as a vendor for sales tax purposes unless the farmer makes sales that are subject to sales tax

A farmer is not required to register as a vendor for sales tax purposes if the only sales the farmer makes are sales of food and food products that are exempt from tax. For example, if a farmer sells fruits, vegetables, baked goods, jellies, jams, and preserves at a roadside stand, the farmer will not be required to register.

If, however, a farmer sells taxable tangible personal property such as plants, shrubs, trees, homemade crafts, or items such as candy and other confections, or sells food or drink for consumption on the premises where sold, then the farmer must register as a vendor for sales tax purposes and collect sales tax on sales of taxable tangible personal property and services, or taxable food and drink.

Registration rules for contractors

A contractor is not required to be registered as a vendor if the contractor only contracts or subcontracts to do capital improvements. See Publication 862, *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*, for more information on the application of the sales tax to contractors and a definition of *capital improvement*.

A contractor is required to be registered as a vendor if the contractor makes sales that are subject to sales tax. For example, if a construction contractor sells free-standing water coolers or repairs a roof or a leaking pipe, the contractor must be registered as a vendor.

A contractor must also register as a vendor if the contractor will be issuing an exemption document to make certain specific purchases exempt from sales tax (such as a purchase of tangible personal property that is installed into real property owned by an exempt organization).

Registration rules for manufacturers

As used in this section, the term *manufacturer* means and includes manufacturers, processors, generators, assemblers, refiners, miners, and extractors.

A manufacturer is required to register as a vendor for sales tax purposes in order to use exemption documents to purchase raw materials, machinery, equipment, parts, tools, supplies, and related services without paying sales tax on its purchases.

Moreover, a manufacturer must be registered as a vendor to accept a resale certificate from its customer. See Publication 852, *Sales Tax Information for Manufacturers*, for more information.

Part II – Making Sales

Taxable sales

Items and services subject to tax

Unless specifically exempted or excluded, sales tax is imposed on:

- retail sales of tangible personal property;
- sales of specifically enumerated services;
- sales of gas, electricity, refrigeration and steam;
- sales of gas, electric, refrigeration and steam service;
- sales of telephony and telegraphy;
- sales of telephone and telegraph service (including telephone answering services, facsimile transmission services, and cellular telephone services);
- sales of food and drink for on premises consumption, for example, when sold by restaurants and taverns;
- sales of food and drink when sold by caterers;
- sales of heated food and sandwiches;
- rent for occupancy of hotel or motel rooms (including bed and breakfasts, boarding houses, guest houses, etc);
- admission charges to places of amusement, other than live dramatic or musical arts performances, motion picture theaters, participatory sporting events, live circus performances, or charges which are taxed under any other law of this State for admissions to race tracks, boxing, sparring or wrestling matches or exhibitions;
- dues, including initiation fees, paid to social or athletic clubs when the dues are more than \$10 per year; and
- charges of a roof garden, cabaret, or other similar place.

For sales tax purposes, the term *sale* includes a lease, rental, exchange, or barter, and license to use or consume. For computer software, the term *sale* also includes the right to reproduce the software.

Sales of tangible personal property

The term *tangible personal property* means physical personal property, of any nature, that has a material existence and is perceptible to the human senses. Tangible personal property includes a variety of goods. Examples of taxable sales of tangible personal property include, but are not limited to, sales of:

- furniture, appliances, and lighting fixtures;
- clothing and footwear*;
- machinery and equipment, parts, tools, and supplies;
- computers and prewritten (canned/off-the-shelf/standard) computer software;
- motor vehicles;
- boats and yachts;

- fuels (for example, motor fuel, diesel motor fuel, and kero-jet fuel);
- candy and confections;
- bottled water, soda, and beer;
- cigarettes and tobacco products;
- cosmetics and toiletries;
- jewelry;
- artistic items such as sketches, paintings, and photographs;
- animals, trees, shrubs, plants, and seeds;
- coins and other monetary items, when purchased for purposes other than for use as a medium of exchange;
- building materials; and
- prepaid telephone calling cards.

*If you sell clothing or footwear, contact the Tax Department for the most up-to-date information concerning the applicable tax rates to charge your customers. You can obtain this information by visiting the Department Web site at www.tax.state.ny.us/pubs_and_bulls/memos/sales_memos.htm or by contacting our Business Tax Information Center at 1 800-972-1233.

Specifically enumerated services

Services subject to tax, which are generally referred to as *specifically enumerated services*, include, but are not limited to:

- providing certain information services;
- processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale (for example, when an individual purchases lumber and has a cabinetmaker construct a bookcase for him or her);
- installing, maintaining, servicing, or repairing tangible personal property that is not held for sale by the purchaser of the service in the regular course of business (for example, servicing automobiles, installing appliances, and repairing radio and television sets);
- storing tangible personal property that is not being held for sale (for example, storing a customer's furs or providing storage for a customer's household goods);
- renting safe deposit boxes, vaults, and similar storage facilities;
- maintaining, servicing, or repairing real property both inside and outside buildings (for example, cleaning, painting, gardening, snow plowing, trash removal, and general repairs);
- providing parking, garaging, or storing services for motor vehicles;

- interior decorating and designing;
- protective or detective services; and
- entertainment or information services provided by means of telephony or telegraphy.

Additional sales taxes and fees you may be required to collect

Passenger car rentals

An additional 5% sales tax is imposed on the short-term rental of a passenger car rented within New York State, or rented outside New York State for use within New York State. *Short term rental* means any rental for less than one year.

Entertainment or information services

An additional 5% sales tax is imposed on entertainment or information services provided by means of telephony or telegraphy that are received in an exclusively aural manner by the customer.

Parking services sold in New York City

If you sell parking services in the borough of Manhattan (New York County), the charges for such services are subject to the 8% additional parking tax imposed on parking services within that borough. Under certain circumstances, an individual resident of Manhattan is exempt from this 8% tax. See TSB-M-85(14)S and TSB-M-96(13)S for more information about the exemption afforded Manhattan residents.

Sales taxes imposed only within New York City

Sales tax is imposed on certain services that are performed or delivered within New York City

A local sales tax is imposed within New York City on the following services delivered in the city:

- credit rating and credit reporting services;
- beautician, barbering, and hair restoring services;
- tanning services;
- manicure and pedicure services;
- electrolysis; and
- massage services.

In addition, the local New York City sales tax is imposed upon every sale of services by weight control and health salons, gymnasiums, turkish and sauna baths and similar establishments and every charge for the use of such facilities. However, charges for services rendered by a physician, osteopath, dentist, nurse, physiotherapist, chiropractor, podiatrist, optometrist, ophthalmic dispenser or a person performing similar services licensed under title VIII of the New York State Education Law are not subject to such local New York City sales tax.

Sales of these services are subject to sales tax only when the services are delivered to customers within New York City. These services are not subject to New York State sales tax, or to any local sales taxes

imposed elsewhere in the state. However, those credit rating and credit reporting services that are subject to New York State and local sales tax as an information service are subject to the full rate of tax imposed in each locality, including New York City.

Sales taxes imposed by certain school districts

Certain school districts in New York State impose sales tax on utilities and utility services

Certain school districts in New York State impose sales tax on sales of the following utilities and utility services:

- gas (including propane sold in containers of 100 pounds or more), electricity, refrigeration, and steam;
- gas, electric, refrigeration, and steam service;
- telephony and telegraphy, except interstate and international telephony and telegraphy;
- telephone and telegraph services, except interstate and international telephone and telegraph services, including telephone answering services and facsimile transmission services (not including prepaid telephone calling cards and services); and
- mobile telecommunications services provided by a home service provider.

Calculating and stating the sales tax

Compute the amount of sales tax due on a sale by applying the combined state and local sales tax rate to that sale

You compute the amount of sales tax due on a sale by applying the combined state and local sales tax rate to that sale. The combined state and local sales tax rate consists of the state sales tax rate, plus the applicable rate of sales tax imposed by the local jurisdiction (city, county, and school district). In addition, the State imposes an additional $\frac{1}{4}\%$ sales tax in those localities that are within the Metropolitan Commuter Transportation District (MCTD). The MCTD is composed of New York City (Bronx, Kings, New York, Queens and Richmond counties), and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties.

The local tax rates vary by jurisdiction and by the items or services sold. For updated state and local sales tax rates, see Publication 718, *New York State Sales and Use Tax Rates by Jurisdiction*.

The point of delivery determines the combined rate to be collected on a sale, except in the case of motor vehicles and certain boats

The point of delivery generally determines the sales tax rate to be applied to a transaction. Therefore, in computing the sales tax due, the rate to be charged is the total of the New York State tax rate in effect in the jurisdiction where delivery takes place, plus the local rate in effect in that jurisdiction, plus the MCTD $\frac{1}{4}\%$ rate, if it applies. For taxable sales subject to the same tax rate, do not compute sales tax on each item separately. Instead, compute the tax on the total amount of the transaction. However, if separate sales are subject to different tax rates, then compute sales tax on each separately.

Motor vehicles and certain boats

For sales of motor vehicles and certain boats, the point of delivery does not necessarily determine the rate of sales tax to be collected.

Sales of motor vehicles and boats to individuals

If the purchaser is an individual who is a resident of New York State and the individual takes delivery of a motor vehicle or boat within New York State, sales tax is to be collected at the rate in effect in the local jurisdiction where the individual is a resident. If the individual is a resident of New York State and has one or more residences outside of New York State, sales tax is to be collected at the rate in effect in the local jurisdiction where the individual is a New York State resident.

If an individual is a resident of more than one local taxing jurisdiction within New York State (whether or not the individual has one or more residences outside of New York State), sales tax is to be collected at the rate in effect in the local jurisdiction within New York State where the vehicle is principally garaged or the boat is principally stored. The storage of a boat also includes mooring it.

If the purchaser is an individual who is not a resident of New York State, generally, no sales tax is imposed unless the vehicle or boat is registered in New York State. If the vehicle or boat is registered in New York State, sales tax is to be collected at the rate in effect in the jurisdiction where the vehicle or boat was delivered to the purchaser.

For sales tax purposes, an individual is a resident of a taxing jurisdiction if the individual has a *permanent place of abode* within the jurisdiction. A *permanent place of abode* is a dwelling place maintained by an individual, or maintained on his or her behalf, whether or not owned by the individual, on other than a temporary or transient basis. The dwelling may be a house, apartment or flat. It also may be a room, including a room in a hotel, motel, boarding house or club; a room at a residence hall operated by an educational, charitable or other institution. A *permanent place of abode* also includes housing provided by the Armed Forces of the United States, whether the housing is located on or off a military base or reservation; or a trailer, mobile home, houseboat or any other premises.

Also, an individual is a resident of any local jurisdiction in which he or she carries out any employment, trade, business or profession with respect to any property used in such trade, business or profession.

Sales of vehicles and boats to businesses

Similarly, if the purchaser is a business that is a resident of New York State and the purchaser takes delivery of a motor vehicle or boat within New York State, sales tax is to be collected at the rate in effect in the local jurisdiction where the business is a resident. If the business is a resident of New York State and has one or more

residences outside of New York State, sales tax is to be collected at the rate in effect in the local jurisdiction where the business is a New York State resident.

If a business is a resident of more than one taxing jurisdiction within New York State (whether or not it has one or more residences outside of New York State), sales tax is to be collected at the rate in effect in the local jurisdiction within New York State where the vehicle is principally garaged or the boat is principally stored. The storage of a boat includes mooring it.

If the purchaser is a business that is not a resident of New York State, generally, no sales tax is imposed unless the vehicle or boat is registered in New York State. If the vehicle or boat is registered in New York State, sales tax is to be collected at the rate in effect in the jurisdiction where the vehicle or boat was delivered to the purchaser.

For sales tax purposes, a business is a resident of a taxing jurisdiction if it carries on any employment, trade or profession or maintains a place of business in the jurisdiction. The storage of property, including vehicles and boats, constitutes maintaining a place of business.

Shipping and delivery charges

If you charge your customer for shipping or delivery on the sale of tangible personal property or tangible personal property on which a taxable service has been performed, the amount on which the sales tax is to be computed includes your charges for shipping or delivery. However, if the customer arranges delivery by a third person and pays this person directly, the third person's delivery charge is not taxable. See TSB-M-92(2)S for more information.

Sales tax collection charts are available

Collection charts for New York State and local sales taxes are available from the Tax Department. See the *Need help?* section on the back cover of this publication.

Whenever you give your customer a written receipt, the amount of sales tax must be separately stated on that receipt. If you do not provide your customer with a written receipt, you may use the alternate unit price method

Whenever you give your customer any sales slip, invoice, receipt, or other statement relating to the sales transaction, you must separately state the amount of sales tax due on the sales slip, invoice, receipt, or other statement.

If you do not provide your customer with a written receipt, you may use the alternate unit price method. The unit price is the price of the product, including sales tax, at which the sale is recorded. This price is either rung up on a cash register or accounted for in some other way. If you use this method, you must display a sign telling the customer that the price he or she is paying includes sales tax. You must also distinguish products offered for sale by: labeling them taxable or nontaxable; displaying taxable and nontaxable products separately; or

by having a detailed list of taxable and nontaxable products available for the customer. You must keep accurate records distinguishing sales of taxable and nontaxable products.

Exempt sales – No exemption certificate required

Certain sales to all purchasers are exempt from sales tax. Therefore, the purchaser is not required to give you an exemption document to claim the exemption. These exemptions include, but are not limited to, sales of:

- food, food products, beverages, dietary foods, and health supplements that are sold by food markets for human consumption; however, sales of candy, confections, soft drinks, alcoholic beverages, fruit drinks that contain less than 70% natural fruit juice, sandwiches, and heated foods are subject to sales tax;
- drugs and medicines intended for use, internally or externally, in the diagnosis, cure, mitigation, treatment, or prevention of illnesses or diseases in human beings;
- medical equipment and supplies; however, medical equipment and supplies purchased for use in providing medical or similar services for compensation, such as services of physicians, hospitals, clinical laboratories, and ambulance companies, are subject to sales tax;
- newspapers, magazines, and other periodicals;
- prosthetic aids and devices, hearing aides and eyeglasses;
- services of laundering and dry cleaning;
- shoe repair; and
- services of a licensed veterinarian constituting the practice of veterinary medicine.

Exempt purchasers

Sales to certain individuals and organizations are not subject to sales tax. Exempt purchasers include federal, New York State, and local New York State governmental agencies; the United Nations; diplomatic missions and diplomatic personnel; exempt organizations such as religious, charitable, scientific, and educational institutions that have qualified for exempt status under New York State sales tax law; certain posts or organizations consisting of past or present members of the armed forces of the United States; and certain Indian nations, tribes, or individuals. In each case, the purchaser must exercise the right to exemption by submitting the proper exemption certificate or other documentation to the vendor.

Federal, New York State, and local governmental agencies

The United States government; an agency or political subdivision of the United States government or New York State; a New York State agency, authority, or political subdivision exercises its right to exemption through the issuance of a governmental purchase order or other appropriate proof that the sale is to the government. Purchases by another state or country or by an agency of another state or country are not exempt from tax.

The United Nations and similar organizations

The United Nations, or any other international organization of which the United States of America is a member, exercises its right to exemption through the issuance of the proper exempt organization form.

Diplomatic missions and diplomatic personnel

Diplomatic missions and diplomatic personnel must be the direct purchasers and payers of record in order to exercise their entitlement to exemption from sales tax. The person making the purchase must show that he or she has a valid tax exemption card issued by the United States Department of State or by the American Institute in Taiwan, or has other documentation evidencing his or her entitlement to exemption as provided by the United States Department of State.

Other exempt organizations

Certain not-for-profit organizations (such as charitable, religious, scientific, and educational organizations) must be designated as an exempt organization for sales tax purposes by the Tax Department. These organizations exercise their right to exemption through the issuance of the proper exempt organization form.

Posts or organizations of past or present members of the United States armed forces

Certain posts or organizations consisting of past or present members of the armed forces of the United States, and the qualifying auxiliary units of such posts or organizations, exercise their right to exemption through the issuance of the proper exempt organization form.

Indian Nations, tribes, and individuals

The following Indian nations or tribes residing in New York State are exempt organizations: Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shinnecock, Tonawanda Band of Senecas, and Tuscarora. These nations or tribes exercise their right to exemption through the issuance of the proper exempt organization form.

Sales to members of recognized Indian nations or tribes are not subject to sales tax, provided that delivery is made to the member of the qualified nation or tribe on a qualified reservation. The qualified reservations are Allegany, Cattaraugus, Oil Spring, Oneida, Onondaga, Poospatuck, St. Regis Mohawk (Akwesasne), Shinnecock, Tonawanda, and Tuscarora.

Exemption certificates

You are not required to collect sales tax from a purchaser who furnishes you with a properly completed exemption certificate within 90 days, that you accept in good faith

You are not required to collect sales tax from a purchaser who furnishes you within 90 days of the delivery of property or rendition of a service a properly completed exemption certificate that you accept in good faith.

Exemption certificates document why you did not collect tax on the sale to which the exemption certificate relates. For example, if you sell a taxable product to a purchaser who is going to sell the product to someone else, you must collect sales tax unless the purchaser gives you Form ST-120, *Resale Certificate*, within 90 days of your delivering the product to the purchaser. If you are audited, the certificate will show the Tax Department that you did not collect sales tax on the sale because the purchaser has certified, by use of the certificate, that the transaction was not subject to tax. You must maintain a system that associates the certificate with the invoice or other evidence of sale you retain as part of your records.

The purchaser must give you a properly completed exemption document within 90 days

If a transaction is exempt from sales tax, the purchaser must give you a properly completed exemption certificate or other required documentation within 90 days of the delivery of the product or the rendition of the service being purchased, or within 90 days of the hotel occupancy or payment of the amusement charge. If you accept a certificate after 90 days, both you and the purchaser share the burden of proving that the sale was exempt, and additional substantiation may be required. Also, both you and the purchaser may be liable for any tax, penalties, and interest due in the event the sale is taxable.

Single transaction certificates

The purchaser may give you an exemption certificate for a single sale. You should attach this to your record of the sales transaction that you keep for your files, and keep it for at least three years after the due date of the sales tax return to which it relates, or the date the return was filed, if later.

Blanket exemption certificates

The purchaser may instead give you a blanket exemption certificate. This certificate may be used for the current sale as well as for subsequent sales made to that purchaser. A blanket exemption certificate may only be used by a purchaser to cover additional sales of the same general type. You must keep the blanket exemption certificate for three years after the due date of the most recent sales tax return to which it relates, or the date the most recent return was filed, if later.

Tax remitted based on accrual method of accounting

A business may keep its books using the cash or accrual methods of accounting. No matter which record keeping method you choose to record your business's transactions, you must report any sales made, and remit the applicable sales tax based on the accrual method of accounting. That is, you are required to report taxable sales and remit the tax due on the return covering the period in which the sales are made, regardless of whether your customer has paid you.

Note: If you are a materialman (a supplier of building materials), see TSB-M-99(2)S for information on the rules relating to when you may report and remit sales tax due using the cash method of accounting.

Taxable business purchases

You should be aware that you are required to pay sales and use taxes in certain situations, whether or not you are required to be registered as a vendor for sales tax purposes.

If you are conducting business in New York State, you should be aware that you are required to pay sales and use taxes in the following situations, whether or not you are required to be registered as a vendor for sales tax purposes:

- you purchase taxable property (such as inventory) or services without payment of taxes because you intend to resell them, but you later use the property or services rather than reselling them;
- you purchase taxable property without payment of taxes because you purchased them from a vendor who is located outside of New York State, and you use that property in this state;
- you purchase taxable gas and electricity without payment of taxes because you purchased these commodities from a vendor who is located outside New York State, and your business uses that gas and electricity in this state;
- you send property out of New York State to have a taxable service performed on that property, do not pay tax, and then use that property in this state;
- you purchase taxable property, services, hotel occupancy or pay amusement charges in New York State without payment of taxes;
- you purchase taxable property in one county or city in New York State and then use the property in a county

- or city with a higher rate of tax than where you purchased the property; or
- you have a taxable service performed on property in one county or city in New York State and then use the property in a county or city with a higher rate of tax than where you had the taxable service performed.

Taxes due in the above situations are generally computed on the sales price paid. You compute the amount of sales and use taxes due by applying the combined state and local sales tax rate to the sales price. (See page 20 of this publication). However, if you use the property outside New York for more than six months prior to its use within the State, tax due may be calculated on the lower of the sales price or fair market value of the property. Also, if you purchase taxable property outside the State, and the property is used in the performance of a contract for a period of less than six months, you may elect to calculate the tax due on the lower of the fair rental value of the property for the period of use within New York or the sales price paid, but only if the property is not completely consumed, or incorporated into real property, in New York State.

Under certain circumstances, there may be a credit available for the amount of tax paid in the state, county, or city where your business made the purchase. To determine whether the tax you paid to another state or local jurisdiction in another state qualifies for credit against New York State and local tax, see Publication 39, *A Guide to New York State Reciprocal Credits for Sales Taxes Paid to Other States*.

Generally, you do not owe tax on property or services purchased outside New York State before you became a resident of New York State or before you began conducting business in New York State. This general rule also applies to local sales and use taxes.

If you are registered, or required to be registered, with the Tax Department for sales tax purposes, you must report the sales and use taxes incurred in connection with the taxable business purchases described in this publication and Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department: Questions and Answers*, with your businesses' monthly, quarterly or annual sales tax return. See page 30 of this publication for information on filing your sales tax return.

Part III – Record keeping

Record keeping rules

Keep detailed records of all sales that are subject to sales or use tax

If you must register as a vendor or if you have voluntarily registered, you must keep detailed records of all sales by jurisdiction. You must also maintain a method of associating an exempt sale to a particular purchaser with the exemption certificate you have on file for that sale or purchaser. If you issue exemption certificates when you make purchases, you must maintain records of these purchases, substantiating exempt use.

Operators of parking facilities have additional record keeping and reporting requirements in Manhattan

If you are the operator of a parking facility in New York County (Manhattan), you have specific record-keeping requirements. If you operate more than one parking facility in Manhattan, you must keep separate records for each facility. For more information about these requirements, see N-03-19. See the *Need help?* section on the back cover of this publication.

Keeping good records of your business operation will help you prepare accurate and complete sales tax returns. Your returns must show gross sales, taxable sales, purchases subject to sales or use tax, sales and use taxes due, and other special taxes due.

Keep your records for a minimum of three years

You must keep your records for a minimum of three years from the due date of the return to which they relate, or the date the return is filed, if later. You must make the records available to the Tax Department upon request.

Sales records

You must keep records of every sale, the amount paid, charged, or due on the transaction, and the sales tax that is due, if any. If you give a written receipt or other evidence of the sale to the purchaser, you must retain a copy of the receipt or other evidence. Otherwise, you must keep a daily record of all cash and credit sales in a daybook or similar journal.

The records and supporting documentation you keep must provide sufficient detail to independently determine the taxable status of each transaction and the amount of tax due and collected.

Delivery records

You must maintain records that substantiate points of delivery of the taxable products or services you sell if delivery was made at a place other than your place of business.

If you sell taxable products or perform taxable services within New York State, you must charge and collect the state's sales tax plus

the sales tax due to the locality where the property or service is delivered. This is true regardless of where you made the sale. However, as indicated on pages 21 and 22 of this publication, for sales of motor vehicles and certain boats, the purchaser's place of residence generally controls the incidence and rate of tax.

If you deliver products or perform services outside New York State, there is no New York State sales tax liability, regardless of where you made the sale. However, if you are a vendor participating in the sales tax agreements with Connecticut or New Jersey, you must collect their applicable state and local sales tax on deliveries made in those states.

In any case, your invoices must clearly show the place of delivery. In addition, you should keep documentation such as delivery receipts, parcel post receipts, bills of lading, driver log books, or, for deliveries outside the U.S., a certified copy of the export declaration from the foreign freight forwarder.

A vendor's charges for postage and handling to deliver taxable products or services are taxable, whether or not the vendor separately states the charges.

Purchase records

You must keep detailed records of the nature, type, value, and amount of all business purchases. You may determine any sales and use tax due on the basis of these records. To fulfill this requirement, you must keep the purchase invoices and prepare a daily, weekly, or monthly analysis.

Maintaining records electronically

If you maintain records in an electronic format, you may be required to give the Tax Department access to the equipment, computer programs, and records.

Part IV – Filing your sales tax return

Filing requirements

You must file a sales tax return even if you did not have any taxable sales or business purchases subject to use tax during the filing period

As a registered vendor, you must file a sales and use tax return on time, summarizing your business activities. You must remit tax due, including any tax that you have not yet collected from purchasers on sales occurring during the filing period. You must file a sales and use tax return on time, even if you have no tax due during the filing period. Sales tax returns are generally due not later than 20 days after the period to which they relate has ended.

If you fail to file a sales tax return on time, penalty and interest are calculated on the amount of tax due. A penalty, in the minimum amount of \$50, will be imposed whether or not there is any tax due. Therefore, it is very important that you know the dates by which your returns must be filed, and that you remit any tax due on time.

If you have not received a return in the mail three weeks before the due date please contact us

Generally, the sales and use tax return is mailed to all vendors. If you have not received your return three weeks before the due date, see the information in the *Need help?* section on the back cover of this publication to obtain a return. Returns are posted to the department's Web site before they are due. Remember, it is your responsibility to file your return on time even if you do not receive a return in the mail.

Please use the preprinted label or the preprinted return we provide to file your return. We cannot properly credit your account unless we have the correct identification number.

Quarterly filing

When you first register you will be classified as a quarterly filer unless you meet the conditions described under annual filing below, which will automatically result in your being classified as an annual filer. The quarterly returns cover the periods March 1 through May 31, June 1 through August 31, September 1 through November 30, and December 1 through February 28 (29 in a leap year). As a result, if you are a quarterly filer, you will be required to file quarterly returns by June 20, September 20, December 20, and March 20 each year.

Monthly filing

If the combined amount of your taxable sales totals \$300,000 or more in any of the preceding four quarters, you must file monthly returns. The change to monthly filing status is effective the first day following the quarter in which you exceed \$300,000 or more in taxable transactions. Since the quarterly return that is used as the basis for determining when you must begin filing monthly may not be received in time to change your filing status, it is your responsibility to notify the Tax Department of a change in your filing status, and file a return for the first month you are required to file monthly. You must

continue to file monthly until your taxable sales are less than \$300,000 in four consecutive quarters, at which time you may request a change to quarterly filing status.

You must also file monthly if you are a distributor of automotive fuel and your sales of automotive fuel total 100,000 gallons or more in any quarter of the preceding four quarters. Since the quarterly return that is used as the basis for determining when you are required to begin filing monthly may not be received in time to mail you the appropriate periodic return, it is your responsibility to notify the Tax Department of the change and file a return for the first month you are required to file monthly. You must continue to file monthly until sales of automotive fuel total less than 100,000 gallons in four consecutive quarters, at which time you may request a change to quarterly filing status.

Annual filing

You will automatically be classified as an annual filer if, on your registration application, you:

- indicate that you do not expect to pay or collect any sales or use tax; and
- describe your major business activity as *manufacturer* or *wholesaler*.

In addition, the Tax Department may later reclassify you as an annual filer if your tax due for the four most recently filed quarterly periods did not exceed \$3,000. The Tax Department will notify you if you are reclassified as an annual filer.

The annual return covers the period March 1 through February 28 (29 in a leap year). Since sales tax returns are generally due within 20 days after the end of the reporting period, if you file as an annual filer, you must file an annual return by March 20 each year. If you are reclassified in midyear, your first annual return will cover the period starting with the date set forth in the department's notice and ending on the following February 28 or 29.

Reproducing returns and schedules

You may reproduce almost any New York State sales tax form (return or schedule), but you must obtain prior approval if you choose to report your sales taxes using either computer-produced returns or computer-generated returns. *Computer-produced returns* are returns that are designed and filled in by a computer peripheral device. *Computer-generated returns* consist of the form's data fields only, line by line, produced by a computer peripheral device on blank paper. While prior approval is not required for other methods of reproduction (photocopying), the reproduction must be substantially the same as the official original forms distributed by the Tax Department. See Publication 77, *Specifications for Reproduction of New York State*

Sales and Use Tax Forms, for more information on the reproduction of sales tax forms.

Completing your sales tax return

Your return is used to summarize your business activity

Your return is used to summarize your business activity. Use it to report your gross sales that are subject to tax, purchases on which you are required to pay tax, and the total amount of the credits you are claiming on the return. You must also summarize the sales tax, use tax, and any special taxes you collected, or were required to collect, and compute the amount of sales and use tax you must remit with the return.

Your return must break down your businesses' activities by jurisdiction

There are over 80 separate jurisdictions (cities, counties, and school districts) statewide that impose local sales and use taxes. Your return is also used to report, for each of these jurisdictions, the amounts of your sales and purchases by jurisdiction, and the amount of sales or use tax you owe for each jurisdiction. Therefore, you must know your gross sales and purchases, your taxable sales and purchases, the amount of tax you collected or were required to collect, and the jurisdiction in which these transactions occurred.

Vendor collection credit

If you file your return on time and remit the amount of sales and use tax due on time, you are entitled to claim a vendor collection credit on your return. The credit is equal to 3½% of the New York State portion of the sales tax collected. The maximum credit allowed is \$150.

Remitting the tax due

You must file your return and remit the tax due on or before the due date. Late filing or late remittances will subject you to penalties and interest.

Certain vendors must remit a portion of the state and local sales and use tax due for each period (including prepaid sales and use taxes due on motor fuel and diesel motor fuel) by electronic funds transfer (EFT) or certified check. We will notify you if you must make this type of payment.

Taxpayers may also voluntarily enroll to remit payments by EFT. For more information about the EFT program, call 1 800 338-0054 or visit our Web site at www.tax.state.ny.us/prompt.

Mailing your sales tax return

Send your sales tax return to the address shown on the return.

In addition to the United States Postal Service, you may use certain private delivery services with the assurance that returns, payments, and other correspondence mailed on time will be considered filed on time. The private services that are currently treated in the same manner as

the United States Postal Service are set forth in Publication 55,
Designated Private Delivery Services.

Part V – Show and entertainment promoters

Show promoters

A show promoter is a person who organizes or operates a show by granting the use of a location

A *show promoter* includes any person who, directly or indirectly, grants the use of a location to any person for the display for sale or for the sale of taxable products or services, at more than three shows or who operates more than three shows, during a calendar year. An example of a person who indirectly grants such use of a location is a person who leases space to a person who intends to operate a show. Show promoters may own or lease parking lots, shopping malls, hotels, or any other place where shows are held. Show promoters can be individuals, business groups, trade associations, government agencies, or nonprofit organizations.

The term *show* includes flea markets, craft shows, antique shows, coin shows, stamp shows, comic book shows, fairs, and similar shows, whether the show is held regularly or is an occasional event, at which more than one vendor displays for sale, or makes sales of, taxable products or services.

If, during a calendar year, you operate four or more shows, or lease property or space to others who operate four or more shows, you must get a show permit

If, during the calendar year, a show promoter operates four or more shows, or leases property or space to others who, in the aggregate, operate four or more shows, the show promoter must register before the fourth show and get a permit from the Tax Department to operate a show. However, a show promoter who operates fewer than four shows during a calendar year does not have to register as a show promoter with the Tax Department for that year.

A *show* is a single event lasting up to seven consecutive days. On the eighth consecutive day, a second show automatically begins; on the fifteenth consecutive day, a third show begins; and so forth. If there is a break between show dates, a new show automatically starts on the first day after the break. If one or more days of a show are rained out, or canceled due to some other uncontrollable event, the break does not automatically start a new show.

Filing for a show permit

A show promoter must file Form DTF-723, *Application for Show Permit and Notice of Show*, at least 10 days before the fourth show opens. Only one permit is required for all shows held at the same location during the calendar year, but the shows must be listed individually on the application and on the back of the permit. A show promoter must file Form DTF-723 at least 10 days before each additional show that is held at a different location, or for each show that is not listed on the permit held by the promoter.

If the application for a show promoter's permit is approved, the Tax Department will send the applicant a validated Form DTF-724, *Permit to Operate a Show*, within five days after receiving a properly completed application. The show promoter must display the validated permit at the main entrance to the show where everyone can see it.

Responsibilities of a show promoter

A show promoter cannot let anyone at the show offer for sale, or make sales of, taxable products or services unless that person is registered as a vendor with the Tax Department. A show promoter must, in addition, make sure that each vendor who is making sales of products or services at the show clearly displays a validated Form DTF-726, *Certificate of Authority for Show and Entertainment Vendors*, or Form DTF-17A or DTF-17C, *Certificate of Authority*.

Record-keeping and filing requirements

Starting with the fourth show, the show promoter must keep a record of each vendor who participates in the show. These records must have the following information for each vendor: name, address, New York State *Certificate of Authority* number, and amount of rent paid. These records must be kept for at least three years, unless the Tax Department gives permission for them to be destroyed earlier.

A show promoter must file Form DTF-727, *Report of Show*, within 20 days after the end of the month in which a show is scheduled to be held. A separate report must be filed for each show scheduled in that month. If the dates of a single show include the last day of one month and the first day of the next month, that show may be reported as though all dates of that show occurred in the second month. This report must be filed even if a scheduled show was canceled. Form DTF-727-I, *Instructions for Form DTF-727, Report of Show*, gives detailed instructions on how the report should be completed and filed.

Form DTF-724, *Permit to Operate a Show*, must be returned along with Form DTF-727 that covers the last show date indicated on the permit.

When a show has more than one promoter, each promoter must file Form DTF-727, but only one promoter needs to submit a list of participating vendors (as shown on the back of Form DTF-727). However, each promoter is responsible for ensuring that the list of participating vendors is submitted. Promoters who do not list participating vendors must include on their Form DTF-727 the names, addresses, and show permit numbers of the other promoters, and indicate which one is submitting the list of vendors.

Entertainment promoters

An entertainment promoter is an owner or operator of a facility where entertainment events are held

An *entertainment promoter* includes any person who, directly or indirectly, owns or operates a facility or site where entertainment events are held, and who allows vendors to make sales of tangible personal property at an event. An entertainment promoter may also be someone who, directly or indirectly, rents, leases, or grants a vendor a license to use space at an entertainment event or who has management responsibility with respect to such vendors making sales at such event.

The term *entertainment event* includes: dance performances or theatrical productions; athletic contests or exhibitions (other than amateur sports competition); folk, rock, pop, symphony, or other music concerts; dramatic plays or musical shows; carnivals or circus performances; rodeos; stand-up comedy acts; beauty pageants; boxing or wrestling matches or exhibitions; bodybuilding or weightlifting competitions; auto races, drag races, or tractor pulls; roller derbies; mud wrestling; track meets; horse shows; dog shows; golf tournaments; tennis tournaments; and other similar forms of entertainment. A baseball game or other professional team sporting event will be considered an entertainment event if in a yearly period at least one of the participating teams has played at least four games at the same facility.

The term *entertainment event* does not include events such as high school or college athletic games, little league games, or festivals featuring amateur sporting events. In the case of concerts, plays, shows, or other similar forms of entertainment, the term *entertainment event* does not include an event that consists of more than three performances by the same person or persons during a weekly period at the same facility or site. In the case of an athletic contest or exhibition, the term *entertainment event* does not include such competition between teams when one of the participating teams competes at the same facility or site more than four times a year. For example, a professional baseball, football, basketball, or hockey game is not considered to be an entertainment event if at least one of the teams participating in the competition plays a regular schedule of more than four events at the facility where the event is held.

Filing for an Entertainment Promoter Certificate

If sales of tangible personal property are going to be made at one or more entertainment events, the promoter must file Form DTF-728, *Application for Entertainment Promoter Certificate*, at least 20 days before the first entertainment event is held. The Tax Department will, within 10 days after receiving a properly completed Form-DTF-728, *Application for Entertainment Promoter Certificate*, send the entertainment promoter a validated Form DTF-729, *Entertainment Promoter Certificate*, if the application is approved.

Only one certificate is required for all events held at the same location during the calendar year, and those events must be listed on the back of the permit. An entertainment promoter must file Form DTF-728 for each additional event held at a different location or for each event not listed on the permit held by the promoter.

Responsibilities of an entertainment promoter

An entertainment promoter cannot let anyone at the entertainment event offer for sale, or make sales of, taxable tangible personal property unless that person is a registered vendor. The entertainment promoter must also make sure that each vendor making sales of taxable products at the event displays a *Certificate of Authority for Show and Entertainment Vendors* or a regular *Certificate of Authority*. Entertainment promoters who allow an unregistered vendor to make taxable sales of tangible personal property at an entertainment event may be subject to a substantial penalty.

An entertainment promoter must keep records of the name, address, and *Certificate of Authority* number of every vendor that the entertainment promoter authorizes to make taxable sales, at each entertainment event for which he or she is a promoter.

An entertainment promoter must also file Form DTF-730, *Report of Entertainment Event*, within 20 days after the end of the month in which an entertainment event was scheduled to be held. The entertainment promoter must file this report even if an event was canceled. Form DTF-730-I, *Instructions for Form DTF-730*, provides detailed instructions on how to complete this report.

If the dates of a single event include the last day of one month and the first day of the next month, that event may be reported as though the entire event occurred in the second month.

Form DTF-729, *Entertainment Promoter Certificate*, must be returned with Form DTF-730, *Report of Entertainment Event*, covering the last event date on the permit.

These requirements apply to an entertainment promoter whether or not admissions are charged for the event, and whether or not any charges for admissions are taxable. If there is more than one entertainment promoter for any entertainment event, the requirement imposed on an entertainment promoter will be satisfied if any one promoter complies with the requirement.

Part VI - Purchasing or acquiring a business or its assets- Caution

If you are acquiring business assets of an existing business, you may be held liable for any sales taxes that are owing to the Tax Department from the seller/transferor

If you are purchasing or otherwise acquiring some or all of the business assets of an existing business other than in the ordinary course of business, you may be held personally liable for any sales taxes determined to be due the Tax Department from the seller. You may be held liable for the amount of the seller's unpaid sales taxes, up to the selling price or fair market value of the assets purchased or acquired, whichever is greater. This applies whether the assets you are acquiring are tangible personal property, intangible property or real property.

The sale, transfer or assignment of business assets, in whole or in part, other than in the ordinary course of business by a person required to collect tax and pay over the same to the Tax Department is called a *bulk sale transaction*.

A purchaser, transferee, or assignee (hereinafter, purchaser) in a bulk sale transaction will not be held liable for the seller's unpaid sales taxes if the purchaser complies with the requirements listed below.

1. Notify the Tax Department- The purchaser must notify the Tax Department of the pending bulk sale transaction at least 10 days before paying for or taking possession of any business assets, whichever occurs first, by filing Form AU-196.10, *Notification of Sale, Transfer or Assignment in Bulk*. The purchaser must send Form AU-196.10 by registered mail to the address given on the form. While the seller is supposed to advise the purchaser of this notification requirement, the failure of the seller to give this notification does not relieve the purchaser of liability for the seller's unpaid sales taxes. When the 10th day falls on a Saturday, Sunday or legal holiday in New York, notice will be timely if given on the next succeeding day which is not a Saturday, Sunday or legal holiday in New York.

2. Tax Department will notify purchaser- Within 5 business days of receiving Form AU-196.10, the Tax Department will advise the purchaser whether it is possible that the seller has unpaid sales taxes. If the seller has unpaid sales taxes or is selected for additional review or audit, the Department will issue the purchaser Form AU-196.2, *Notice of Claim to Purchaser*. If the seller does not have any unpaid sales taxes and if an additional review or audit is not necessary, the Department will issue the purchaser Form AU-197.1, *Purchaser's and/or Escrow Agent's Release-Bulk Sale*.

If the Tax Department does not issue Form AU-196.2 within 5 business days of the date of receipt of a properly completed and timely Form AU-196.10, the purchaser cannot be held liable for any of the seller's unpaid sales taxes unless there are outstanding warrants or judgments for unpaid sales taxes.

For purposes of the Tax Department's obligation to respond within 5 business days, the date of receipt of Form AU-196.10 by the Tax Department will be the date it was actually delivered to the Bulk Sales Unit of the Audit Division, but no earlier than 10 days before the later of the scheduled date of sale or the actual date of sale (The actual date of sale is deemed to be the earlier of the date of payment or taking possession).

A. If purchaser receives Form AU-197.1- If the purchaser receives Form AU-197.1, the purchaser may pay the seller the full purchase price. The Tax Department will not hold the purchaser liable for any unpaid sales taxes, even if there are outstanding warrants or judgments.

B. If purchaser receives Form AU-196.2- If the purchaser timely receives Form AU-196.2, the purchaser is advised not to pay the seller until the Department completes its review of the seller's sales tax account. Within 90 days of the receipt of Form AU-196.10, the Tax Department must notify the purchaser (and the seller) of the actual amount of sales taxes due from the seller for which the purchaser will be held liable.

Upon receipt of Form AU-196.2, the purchaser may wish to consult a tax practitioner about the best course of action to take.

For more information on bulk sales transactions, see TSB-M-83(6)S, *Guidelines for Bulk Sales Transactions*.

Example 1: Corporation A, a person required to collect sales tax, sells its business assets to Corporation B. Such a sale is a bulk sale transaction.

Example 2: Corporation A, a person required to collect sales tax, transfers all of its business assets to Corporation B in exchange for stock in Corporation B. The transfer of Corporation A's assets to Corporation B is a bulk sale transaction.

Example 3: Corporation A purchases all the issued and outstanding stock of Corporation B, a person required to collect sales tax. Corporation A and Corporation B will continue to exist as separate legal entities. Since the business assets of Corporation B have not

been transferred in connection with the sale of its stock, this is not a bulk sale transaction.

Example 4: Corporation A, a person required to collect sales tax, sells all of its inventory which is purchased by Corporation B for resale. The sale by Corporation A is a bulk sale transaction.

Example 5: Mr. Smith, a person required to collect sales tax, makes a gift of all of his business assets to another person. This transfer is a bulk sale transaction.

If you have any questions about the bulk sale requirements, call (518) 457-4164 from 8:00 a.m. to 4:00 p.m. (eastern time), Monday through Friday. Please have either the assigned bulk sales case number or the name and the sales tax identification number of the seller or the purchaser available when you call.

In addition to the above bulk sale transaction notification requirements, if you intend to operate a business, you need to determine your registration requirements. To register, file Form DTF-17, *Application for Registration as a Sales Tax Vendor*. This form must be completed and sent to the address listed in the instructions for the form at least 20 days before making taxable sales or using exemption certificates, including resale certificates used for purchasing inventory. If you do not register on time, you may be subject to substantial penalties. For more information on registering as a sales tax vendor, please see Part I (pages 7 through 16) of this publication.

In addition to the purchaser's obligations and requirements with respect to sales taxes accrued and determined to be due to the Tax Department from seller, the purchaser is also responsible for paying the sales tax due, if any, on the purchase of any tangible personal property it purchased or otherwise acquired in a bulk sale transaction. Sales tax is not imposed on the sale of real property or intangible assets, such as goodwill.

Notes

Notes

New York State Department of Taxation and Finance

Electronic Services

The NYS Department of Taxation and Finance is continuing its efforts to provide our customers – the citizens and businesses of this state – with world-class service. We are using the latest technology to develop innovative ways to better serve you. Many of these initiatives are available on the Department's Web site at www.nystax.gov.

General . . .

- ◆ Visit our Individual Answer Center to find answers to all your tax questions.
- ◆ View and pay open assessments.
- ◆ Use the penalty and interest calculator.
- ◆ Sign up for free email notifications through our Subscription Service.

Individuals . . .



- ◆ E-file your income tax return.
- ◆ Determine which income tax form to file.
- ◆ Pay your income taxes by credit card and electronic funds withdrawal.
- ◆ Apply for an income tax installment payment agreement.
- ◆ Apply for an automatic time extension to file your return.
- ◆ Check the status of your income tax refund.
- ◆ Review your estimated tax account balance.

Businesses . . .

- ◆ Report newly hired and rehired employees.
- ◆ E-file quarterly International Fuel Tax Agreement (IFTA) reports.
- ◆ Obtain motor carrier credentials (HUT, IFTA, IRP and SSRS) online.
- ◆ Search the corporation tax issuer's allocation percentage inquiry.
- ◆ Search the cigarette tax inquiry for licensed and registered agents, wholesale dealers and retail dealers.

www.nystax.gov

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: Forms are
available 24 hours a day,
7 days a week. 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to
5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications:	1 800 462-8100
Business Tax Information Center:	1 800 972-1233
From areas outside the U.S. and outside Canada:	(518) 485-6800



Hotline for the hearing and speech impaired:

If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

**NYS TAX DEPARTMENT
W A HARRIMAN CAMPUS
ALBANY NY 12227**