

**Purchaser's
Obligations
to Pay Sales
and Use
Taxes Directly
to the Tax
Department
Questions and
Answers**

About this publication**Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department**
Questions and Answers

This publication answers commonly asked questions about when individuals, estates, and trusts must pay sales or use taxes directly to the New York State Tax Department (Tax Department). The questions and answers in this publication also apply to businesses located in New York State that are not required to be registered for New York State sales and use tax purposes. However, this publication is not intended to answer questions relating to businesses that are registered or are required to be registered for sales tax purposes. For purposes of this publication, the word *tax* may be used to refer to either the sales tax, the use tax, or both. Also, the term *personal purchases* will be used to mean non-business related purchases.

All businesses located in New York State that sell taxable property or services are required to be registered for sales tax purposes and must collect New York State and local taxes on taxable property delivered to purchasers in New York State, or on taxable services performed for purchasers in New York State. Certain businesses that are located outside of New York State are not required to collect New York State and local tax. Businesses are required to separately state on receipts provided to purchasers the amount of tax collected. If a business does not collect New York State and local tax from a purchaser, it is the purchaser's responsibility to pay tax directly to the Tax Department on a taxable transaction.

Note: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law and regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued.

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1. When do you owe New York State and local sales or use tax directly to the Tax Department?

When you make a purchase of taxable property or services from a seller (vendor) that is located in New York State and take delivery in New York State, the vendor should collect state and local sales tax due and forward it to the Tax Department. However, you are responsible for paying the tax directly to the Tax Department under the following three circumstances:

Deliveries into New York State without collection of sales tax

You owe state and local sales and use tax if you purchase taxable property or a taxable service that is delivered to you in New York State without payment of New York State and local tax to the seller, such as through the Internet, by catalog, from television shopping channels, or on an Indian reservation.

Purchases of property or services outside New York State with subsequent use in New York State

You may also owe New York state and local sales tax or use tax if you are a *resident* of New York State at the time you purchase any of the following *outside* New York State:

- property you bring into New York State for use in New York State;
- a service performed on property outside New York State, and you bring the property into New York State for use here; or
- a service (such as a protective or detective service) provided to you within New York State.

However, you are not required to pay state and local use tax on any property or service on property that you bring into New York State if you purchased the property or service on the property outside of the state before you became a resident of New York State.

You may be eligible for a credit for sales or use tax paid to another state. See Publication 39, *A Guide to New York State Reciprocal Credits for Sales Taxes Paid to Other States*.

Additional local tax

You may owe an additional **local** tax if you are a resident of a locality (county or city) at the time of purchase and you make any of the following transactions in a locality that has a lower tax rate than the locality where you are a resident for sales and use tax purposes:

- purchase property and then bring the property into the locality where you are a resident;
- have a taxable service performed on property and then bring the serviced property into the locality where you are a resident; or
- purchase a service (such as an information service) and the service is provided in the locality where you are a resident.

However, you are not required to pay any additional local tax on any property or service that you bring into a locality in New York State that you purchased outside that locality before you became a resident of that locality.

2. Who is a New York State resident for sales and use tax purposes? Can you be a resident of more than one locality for sales and use tax purposes?

For sales and use tax purposes, the definition of *resident* may include a person who may not be considered a resident for personal income tax purposes. For example, a person maintaining a permanent place abode in New York who does not spend more than 183 days a year in the state, a college student, and military personnel may all be residents for sales and use tax purposes even if they are not residents for income tax purposes. For sales and use tax purposes, an individual is a resident of the state and of any locality in which he or she maintains a permanent place of abode. A *permanent place of abode* is a dwelling place maintained by a person, or by another for that person to use, whether or not owned by such person, on other than a temporary or transient basis.

The dwelling may be:

- a home;
- an apartment or flat;
- a room (including a room at a hotel, motel, boarding house, or club);
- a room at a residence hall operated by an educational, charitable, or other institution;
- housing provided by the armed forces of the United States, whether housing is located on or off a military base or reservation;
- a trailer;
- a mobile home;
- a houseboat; or
- any other premises.

This includes second homes. Therefore, you can be a resident of more than one locality and/or state for sales and use tax purposes.

An individual doing business in New York State is a resident for sales and use tax purposes of the state and of any county or city in which the individual is doing business with respect to purchases of taxable property or services used in the business. If an individual is engaged in business in New York State but has no permanent place of abode in New York State, the individual will owe use tax only on taxable purchases made with respect to the business operated in New York.

For sales and use tax purposes, an estate or trust that is carrying on a business, trade, profession, or employment in New York State is a resident for sales and use tax purposes of the state and of any county or city in which the estate or trust is carrying on these activities, with respect to the purchase of taxable property or services used in these activities.

A corporation incorporated under the laws of New York is a resident of New York State. A corporation, association, partnership (including an LLP), LLC, or other entity doing business in New York State or maintaining a place of business in New York State is a resident of New York State and of any locality in which it is doing business or maintaining a place of business.

3. What are some examples of when you must pay tax directly to the Tax Department?

The following are examples of when a New York State resident must pay tax directly to the Tax Department. These examples apply when the vendor from whom you purchased the property or service did not collect New York State or local sales tax from you, or did not collect the local tax using the rate for the locality in which you live.

- *You buy furniture in Massachusetts and you bring it back to New York State for use in your residence.*
- *You take your stereo equipment to Connecticut to be repaired; after it has been fixed, you bring it back to New York for use in your residence.*
- *You order a bedspread over the Internet from a vendor located in Georgia and it is delivered by mail for your use in New York State.*
- *You send your watch to a repair shop in Pennsylvania to be repaired. The repaired watch is returned by mail to your residence in New York State.*
- *You purchase a piece of jewelry and pay sales tax in a locality in New York State at a lower tax rate than the rate in the locality where you live. When you bring the jewelry back to the locality where you live, you will owe tax for the **difference** between the rate in the locality where you live and the rate in the locality where you purchase the jewelry and paid sales tax.*
- *You picked up your radio that you had repaired in a locality in New York State with a lower sales tax rate than the rate for the locality in which you live. You will owe tax for the **difference** between the rate in the locality where you live and the rate in the locality where you had the radio repaired.*

The following are examples of when a business located in New York State that is not registered or required to be registered for sales and use tax purposes must pay tax directly to the Tax Department. These examples apply when the seller did not collect New York State sales tax from the business.

- *The business buys office supplies in New Jersey and brings them back to New York State for use in the business.*
- *The business orders office equipment through a catalog from a vendor located in Michigan. The equipment is shipped by common carrier to the business in New York State.*
- *The business sends a fax machine to New Jersey to be repaired. The repaired fax machine is returned by common carrier to the business in New York State.*
- *The business purchases and pays sales tax on office equipment and supplies in a locality in New York State with a lower tax rate than the rate in the locality in New York State in which the business is located. When the business brings the equipment and supplies to its office, it will owe tax for the **difference** between the rate in the locality where the office is located and the rate in the locality where the business purchased the equipment and supplies.*
- *The business picks up and pays sales tax on a printer that it had repaired at a business in a locality in New York State which has a lower sales tax rate than the rate in the locality where the business is located. The business will owe tax for the **difference** between the rate in the locality where the business is located and the rate in the locality where the business had the printer repaired.*
- *The business takes its computer to Pennsylvania to be repaired. The business then picks it up and returns it to its office in New York State. The business owes tax on the cost of the repairs when it brings the computer back to New York State for use in the business.*
- *A dentist located in New York State buys equipment from a dental supply company in another state, and had the equipment delivered to the New York office. The dentist will owe tax at the rate in the locality in New York State where the office is located.*

4. What tangible personal property and services are subject to sales and use taxes?

Most sales of tangible personal property are subject to sales and use tax. Some examples are: cigarettes and other tobacco products; alcohol; candy; books (other than textbooks); electronic equipment; furniture; collectibles (stamps, coins, etc., bought for collections); works of art;

off-the-shelf computer software; and generally, a garage sale item costing more than \$600.

Some examples of tax-exempt items of tangible personal property are: prescription and non-prescription drugs and medicines used for humans; certain medical equipment and supplies used for humans; newspapers; periodicals; most food items; U.S. and New York State flags; Indian arts and crafts when purchased on an Indian reservation; used mobile homes; and college textbooks.

Only certain services are subject to sales tax. Taxable services include: maintaining, servicing, and repairing tangible personal property (for example, auto and appliance repairs); and maintaining, servicing, and repairing real property such as land and buildings (for example, services such as house repairs and lawn maintenance).

Some examples of nontaxable services are dry cleaning; veterinary services (except for grooming and boarding); and legal, accounting, and medical services.

For more information on taxable and exempt goods and services, see Publication 750, *A Guide to Sales Tax in New York State*, and Publication 850, *New York State and Local Sales and Use Tax Quick Reference Guide*.

5. What price do you use to determine the amount of tax due?

The sales tax is generally computed on the price you paid for an item or service, **including** any shipping or handling charges made by the seller. However, there are two instances where a New York State resident's tax due is not based on the purchase price of the item or service:

- If you used the item or service outside of New York for more than six months prior to bringing the item or service into New York, the amount subject to tax is the lesser of the purchase price or the fair market value at the time you bring the item or service into New York State.
- In the case of tangible personal property brought into New York State to be used in the performance of a contract for a period of less than six months, the amount subject to tax may, at the election of the user, be based on the fair rental value of the property for the period of its use within New York State, but only if the property is not completely consumed, or incorporated into real property, in New York State.

In these instances, a lower amount of tax may be due. The same six-month rule applies for purposes of computing local tax due. The following examples illustrate how you would compute the amount of

New York State use tax due on purchases made outside New York State, and subsequently brought to New York State for use.

Example 1: You send your stereo equipment to New Jersey to be repaired. After being repaired, the equipment is shipped back to you. The vendor's bill sets forth the charge for the repair service and also a charge for shipping. You must pay tax on the price you paid for the service, including the shipping charge.

Example 2: You are a New York State resident. In September you buy and register a boat in Florida. You use the boat in Florida and then bring it to New York State and register the boat in New York the following May. When you register the boat to use in New York State, you may compute your tax based on the lower of cost or fair market value of the boat.

Example 3: A contractor performing a construction contract in New York State purchases a crane outside New York for \$100,000 and brings it into New York for temporary (less than six months) use in the contract work. The crane has a fair rental value of \$2,500 per month. The contractor is liable for the tax on the \$100,000 purchase price unless the contractor elects to report the tax based on the fair rental value of \$2,500 per month.

6. What rate do you use to compute the tax?

On most purchases, the tax rate to use is determined as follows:

Property or service delivered to you in New York State

If property or a service is delivered to you in New York State, the tax is computed at the combined state and local rate in effect in the locality where the delivery occurs regardless of where you reside. The rate that applies is the rate in effect at the time of delivery.

Property or service brought into New York State

If you are a New York State resident and you purchased property or a service outside New York State and you brought the property into New York State to your jurisdiction (locality) of residence, the tax is computed at the combined state and local rate in effect where you reside. The rate that applies is the rate in effect at the time you brought the property or service into that jurisdiction.

Property or a service delivered in one locality of New York State and used in another locality

In addition, if you use the property or service in another locality in New York State, you owe use tax to the second locality if you were also a resident of that locality at the time of the purchase and its rate is higher than the rate in effect where the property was originally delivered to you in New York State or brought by you into New York State.

Rates by jurisdiction

Publication 718, *New York State Sales and Use Tax Rates by Jurisdiction*, provides the tax rates in effect for all counties and cities that impose tax. You may also visit our *Online Tax Center* at www.nystax.gov and click on the link for the sales tax jurisdiction and rate lookup. There you can use our electronic service to obtain the current combined State and local sales tax rate and the proper jurisdiction and jurisdiction code. In addition, you may call the information number given in the *Need help?* section located on the back cover of this publication.

Example: You buy garden equipment for use at your Hudson, New York residence through an out-of-state catalog company that did not collect New York State sales tax from you. Use tax is due on the purchase price of your equipment, including shipping and handling costs charged by the seller, and is computed at the combined state and local tax rate in effect in Hudson, New York (Columbia County), on the date delivery occurred.

Example: You are a resident of Lakewood, New York, and you send your couch to Wattsburg, Pennsylvania, to be re-upholstered. The vendor does not collect New York State sales tax from you. The couch is then shipped to your summer residence in Lake George, New York, for use there. Use tax is due on the cost of the re-upholstering, including shipping and handling charges made by the upholsterer, and is computed at the rate in effect for Lake George, New York (Warren County), at the time you took delivery of the couch.

7. Are there special rules that apply to paying tax on motor vehicles, trailers, or vessels?

Motor vehicles, trailers, or vessels

With respect to a motor vehicle, trailer or vessel that must be registered or titled by the New York State Department of Motor Vehicles (DMV), the tax is computed at the combined state and local rate in effect where you reside unless you are a resident of more than one locality.

Special rule for motor vehicles, trailers, and vessels when you are a resident of more than one locality

If you are a resident of more than one locality, the rate is generally based on the rate in effect where the property will be principally garaged.

8. How do you pay tax if your business is required to be registered for sales tax purposes?

Businesses that are registered or required to be registered

All businesses that are registered, or required to be registered, with the Tax Department for sales tax purposes must pay their sales and use taxes on their sales tax returns for purchases made by the businesses.

9. If you are filing a New York State income tax return, when and how do you as an individual, estate, or trust pay the tax to the Tax Department?

If you file a New York State income tax return

If you are an individual, estate, or trust that is a New York resident for sales and use tax purposes and you are filing a New York State personal income tax return or fiduciary income tax return, your sales and use taxes are due on the due date of your income tax return, without regard to any extension of time allowed for filing your income tax return. Your sales and use tax should be paid with your income tax return or with your request for an extension of time to file your income tax return. If you request an automatic extension of time **to file** your New York State income tax return, your sales or use tax (as well as your income tax) must be paid by using Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*, or Form IT-370-PF, *Application for Automatic Six-Month Extension of Time to File for Partnerships and Fiduciaries*. If you are eligible for an automatic extension of time **to pay** your New York State income tax (for example, you are in a foreign country), your sales and use taxes are due when your New York State income tax is due.

What you can report and pay for on your income tax return

You may report and pay your sales or use tax liability on your income tax return for:

- your personal purchases;
- purchases related to your royalty activities or rental real estate activities reported in Part I of Federal Schedule E, and;
- purchases related to your Federal Schedule C, C-EZ, or F business (not otherwise eligible for exemption) unless the business is, or is required to be registered for sales tax purposes.

Methods of calculating the amount of tax due

When reporting and paying your sales or use tax on your income tax return, the income tax return instructions offer two methods to calculate the amount of tax due.

The sales and use tax chart

For **personal purchases** of items or services costing less than \$1,000 each, excluding shipping and handling, you may elect to use the *sales and use tax chart* to determine your tax due on these purchases. The *sales and use tax chart* is a simple, time-saving method to compute your sales or use tax on individual items or services costing less than \$1,000. The *sales and use tax chart* applicable to tax year 2008 is shown below.

2008 sales and use tax chart

If your federal adjusted gross income is:	Tax amount
up to \$15,000*	\$6
\$15,001 to \$30,000.....	\$16
\$30,001 to \$50,000.....	\$22
\$50,001 to \$75,000.....	\$29
\$75,001 to \$100,000.....	\$42
\$100,001 to \$150,000.....	\$59
\$150,001 to \$200,000.....	\$75
\$200,001 and greater.....	.0377% (.000377)
.....	of income, or \$200,
.....	whichever amount
.....	is smaller

* This may be any amount up to \$15,000, including 0 or a negative amount.

The exact calculation method

The second way to compute your sales and use taxes for personal purchases of items or services costing less than \$1,000 each, excluding shipping and handling, is to calculate the exact amount of tax due. The income tax return instructions refer to this as the *exact calculation method*.

Personal purchase of items or services costing \$1,000 or more each

To compute your sales and use taxes on personal purchases of items or services costing \$1,000 or more each, excluding shipping and handling,

you must calculate the exact amount of tax due using the *exact calculation method*.

Note: You may **not** use the *sales and use tax chart* for royalty activity or rental real estate activity-related purchases, or for business-related purchases. You **must** use the *exact calculation method*.

Motor vehicles, trailers or vessels

See Question #7 on page 13, for the special rules regarding a motor vehicle, trailer, or vessel that must be registered or titled by the New York State Department of Motor Vehicles.

10. When and how do you as an individual, estate, or trust pay the tax to the Tax Department if you are not filing a New York State income tax return?

If you are *not* filing a New York State income tax return

If you are an individual, estate, or trust that is a New York resident for sales and use tax purposes and you are not filing a New York State personal income tax return or fiduciary income tax return, you must pay any sales and use tax you owe by filing Form ST-140, *Individual Purchaser's Annual Report of Sales and Use Tax*, for the period covered by your tax year for federal income tax purposes. Form ST-140 is due on the date your federal income tax return is due, without regard to extensions of time to file. If no federal income tax return is required to be filed, Form ST-140 is due on the date your federal return would have been due, without regard to extensions of time to file.

What you report and pay on the ST-140

You must report and pay your sales or use tax liability on your ST-140 for:

- your personal purchases;
- purchases related to your royalty activities or rental real estate activities that would be reported in Part I of Federal Schedule E, and;
- purchases related to your Federal Schedule C, C-EZ, or F business (not otherwise eligible for exemption) unless the business is registered or required to be registered for sales tax purposes.

Methods of calculating the amount of tax due

The sales and use tax chart

When reporting and paying your sales or use tax on Form ST-140, the instructions offer two methods to calculate your tax. For **personal purchases** of items or services costing less than \$1,000 each, excluding

shipping and handling, you may elect to use the *sales and use tax chart* to determine your tax due on these purchases. The *sales and use tax chart* is a simple, time-saving method to compute your sales or use tax on items or services costing less than \$1,000 each. The *sales and use tax chart* applicable to tax year 2008 is shown below.

2008 sales and use tax chart

If your federal adjusted gross income is:	Tax amount
up to \$15,000*.....	\$6
\$15,001 to \$30,000.....	\$16
\$30,001 to \$50,000.....	\$22
\$50,001 to \$75,000.....	\$29
\$75,001 to \$100,000.....	\$42
\$100,001 to \$150,000.....	\$59
\$150,001 to \$200,000.....	\$75
\$200,001 and greater.....	.0377% (.000377)
.....	of income, or \$200,
.....	whichever amount
.....	is smaller

* This may be any amount up to \$15,000, including “0” or a negative amount.

The exact calculation method

The second way to compute your sales and use taxes for personal purchases of items or services costing less than \$1,000 each, excluding shipping and handling, is to calculate the exact amount of tax due. The ST-140 instructions refer to this as the *exact calculation method*.

To compute your sales and use taxes on personal purchases of items or services costing \$1,000 or more each, excluding shipping and handling, you must calculate the exact amount of tax due using the *exact calculation method*.

Note: You may **not** use the *sales and use tax chart* for royalty activity or rental real estate activity related purchases, or for business-related purchases. You **must** use the *exact calculation method*.

Exception for motor vehicles, trailers, or vessels

See Question #7 on page 13, for the special rules regarding a motor vehicle, trailer, or vessel that must be registered or titled by the New York State Department of Motor Vehicles.

*** See the *Need help?* section on the back cover of this publication for information on how to obtain forms.**

11. When and how does a corporation, partnership, LLC, or LLP pay the tax to the Tax Department?

A corporation, partnership (including limited liability partnership (LLP)), or limited liability company (LLC) operating in New York State that is not registered or required to be registered for sales tax purposes must report its use tax liability by filing Form ST-130, *Business Purchaser's Report of Sales and Use Tax*. The use tax is due within 20 days of the date of the first taxable use in New York of the tangible personal property or taxable service.

Example: A travel agency located in New York State is a corporation. It is not registered or required to be registered for sales tax purposes. The corporation purchases a computer over the Internet from a seller located outside New York State, who did not collect New York State sales tax from the corporation. The seller has the computer delivered to the travel agency's office in New York. Use tax on the purchase must be paid directly to the Tax Department using the Form ST-130 within 20 days of its delivery to the agency.

See Question #8 on page 14, if your business is registered or required to be registered with the Tax Department for sales tax purposes.

Exception for motor vehicles, trailers or vessels

See Question #7 on page 13, for the special rules regarding a motor vehicle, trailer or vessel that must be registered or titled by the New York State Department of Motor Vehicles.

*** See the *Need help?* section on the back cover of this publication for information on how to obtain forms.**

12. Do you get a credit for sales or use tax paid to another state, to a local jurisdiction in another state, or to another locality in New York State?

To determine whether the sales or use 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*. If you bought the item or service in a locality in New York State other than where you reside, the tax you paid at the time of the purchase may be claimed as a credit against the tax due in the locality where you reside. Federal excise taxes and customs duties and taxes and fees you paid in foreign countries are not allowed as a credit against any New York State or local sales or use tax that you owe.

13. What happens if you don't pay the tax due?

Failure to pay sales or use tax may result in the imposition of penalties and interest. The Tax Department conducts both routine and special audits to promote compliance. In addition, the U.S. Customs Service provides the Tax Department with information from customs declarations filed by New York State residents returning from overseas travel. The Tax Department also obtains information on sales to New York State residents under information exchange agreements with other states.

Notes

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The New York State Department of Taxation and Finance

The place for all electronic services

Visit our Online Tax Center (OTC), your gateway to all electronic services.

Use the OTC to make payments, file certain returns, view account information, and more. Access is available 24 hours a day, 7 days a week (except for scheduled maintenance).

Look for the OTC logo on our Web site home page

www.nystax.gov

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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.

Business Tax Information Center: (518) 457-5342
For in-state callers without free long distance: 1 800 972-1233

To order forms and publications: (518) 457-5431
For in-state callers without free long distance: 1 800 462-8100



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at 1 800 634-2110. If you do not own a TTY, 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, call the information center.