



New York State and Local Sales and Use Tax

Important Information for Business Owners

Your responsibilities under the New York State and local sales and use tax laws

This publication provides important information for business owners regarding their responsibilities under the New York State and local sales and use tax (sales tax) laws. Your responsibilities include registering as a sales tax vendor, collecting tax, keeping accurate records, filing returns and paying sales taxes with your returns. Once you are registered as a sales tax vendor, you become a trustee for New York State. As a trustee, you have a personal responsibility to collect the proper amount of sales tax from your customers and to pay the tax you have collected with your timely filed sales tax return. Failure to remit the sales tax you have collected is a crime.

Background

If you make taxable sales of tangible personal property, perform any taxable services, receive amusement charges, or operate a hotel or motel, you must register as a sales tax vendor and obtain a *Certificate of Authority*. If you are acquiring all or part of the assets of an existing business that is registered or required to register as a sales tax vendor, you must also register (see also, Purchase or Sale of a Business or its Assets, page 5). In addition, you must be registered as a sales tax vendor to issue or accept most New York State sales tax exemption certificates or documents. For example, even though most wholesalers may not be required to collect sales tax because all of their sales are for resale (and, therefore, are not subject to sales tax), they must still be registered as sales tax vendors to legally issue and accept most exemption certificates or documents.

Registering as a Sales Tax Vendor

You cannot legally make taxable sales or issue or accept most New York State exemption certificates or documents until you have registered as a sales tax vendor and received a *Certificate of Authority*. To register as a sales tax vendor, visit our *Online Tax Center* at www.nystax.gov. You may also register by using Form DTF-17, *Application to Register for a Sales Tax Certificate of Authority*. Form DTF-17 is available in a paper version and is also available on our Web site in both a downloadable version or as a fill-in form. Whether you file your application online or use Form DTF-17, you must do so at least 20 days before you begin operating your business and making taxable sales. For general information on the requirements and the responsibilities associated with sales tax registration, see Publication 750, *A Guide to Sales Tax in New York State*. For information on how to obtain forms and publications, see the *Need Help?* section on page 6 of this publication.

Once you are registered as a sales tax vendor, your obligations include, but are not limited to:

- collecting the proper amount of state and local sales tax from your customers (see Publication 750);
- keeping adequate records related to your business activities as a sales tax vendor (see page 3);
- filing timely sales tax returns, even if no tax is due (see page 4);
- paying any sales taxes due with your return (see page 4); and
- keeping your registration data (e.g., change of address or responsible persons) up-to-date with the department. (see Forms DTF-95, *Business Tax Account Update* and DTF-96, *Report of Address Change for Business Tax Accounts*).

About your *Certificate of Authority*

Once you receive your *Certificate of Authority*, you are a registered sales tax vendor and are authorized and required to collect state and local sales tax in New York State and to issue and receive New York State and local sales tax exemption certificates or documents. In addition, 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. If you have no permanent location, you must attach it to your truck, cart, wagon, stand, or other vehicle or facility from where you conduct your business.

A *Certificate of Authority* is not transferable or assignable. If you buy an ongoing business, you must apply for your own *Certificate of Authority* (see Purchase or Sale of a Business or its Assets, page 5). If you sell your business or cease doing business, you must indicate on your last return that it is your 'Final Return' and you must surrender your *Certificate of Authority* to the Tax Department. To surrender your certificate, complete the back of the certificate as indicated and send it with your final sales tax return to the address shown on the return.

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

Suspension or revocation of your *Certificate of Authority*

Your *Certificate of Authority* may be suspended or revoked by the Tax Department for any of the following reasons:

- you willfully fail to file a report or return required under the sales tax law;
- you willfully file, cause to be filed, give, or cause to be given a report, return, certificate or affidavit required under the sales tax law that is false;
- you willfully fail to collect, truthfully account for, or pay over any state and local sales tax;
- you willfully fail to keep adequate records;
- you have been convicted of a crime under the Tax Law and the conviction has occurred not more than one year prior to the date of such revocation or suspension; or
- you willfully fail to file a bond or establish a trust account and make payments as provided in section 539.5 of the Sales and Use Tax Regulations, if you are notified by the Tax Department to do so.

If the Tax Department decides to suspend or revoke your *Certificate of Authority*, you will receive a notice of proposed suspension or revocation by certified or registered mail. The notification will:

- state the basis for the suspension or revocation of your *Certificate of Authority*;
- notify you that the impending suspension or revocation will take effect unless you challenge the proposed action; and
- provide you with information on how to schedule a hearing or to request a conciliation conference.

If a suspension or revocation of your *Certificate of Authority* takes effect, you are required to immediately return your *Certificate of Authority* to the Tax Department. **In addition, you must discontinue making taxable sales of tangible personal property or services, and must discontinue accepting or issuing exemption documents, which means you may be out of business.**

Record-keeping Requirements

General

As a sales tax vendor, you must keep accurate records that contain all the information you need to prepare your sales tax returns and to verify their accuracy in case you are audited by the Tax Department. No one set of record-keeping rules applies to all vendors. However, your records must be appropriate for your particular operation or business and any record-keeping systems or equipment you use. Records may be kept in paper or electronic format. If you choose to keep records in electronic format, they must actually reproduce the original record.

Your sales tax records must be kept for at least three years after the due date of the last return to which they relate or the date the return was filed, if later. Your records must be made available to the Tax Department upon request. If you have any sales tax matter pending with the Tax Department for a period more than three years old, the records for that period should be kept until the matter is resolved.

Types of records that must be kept:

The following are the types of records that must be kept for sales tax purposes:

Records of all sales, including:

- the amount paid, charged, or due on the sale or transaction, along with any subsequent return or credit information related to the sale or transaction;
- the sales tax due, if any, on the sales transaction;
- a copy of any written sales slip, invoice, receipt or other evidence of price, amusement charge or hotel or motel rent that you give your customer;
- a daily record of all cash, debit and credit sales;
- the location where the sale was made, or if applicable, where delivery was made; and
- an exemption certificate or document, where required, associated with each exempt sale you make.

Records of all business purchases, including:

- business purchases you make using exemption certificates or documents;
- purchases of taxable property or services purchased for your business, without the payment of sales tax (e.g., business supplies or equipment purchased in another state or over the Internet). **Note:** You must pay any use tax you owe on these purchases when you file your sales tax return. For further information on use tax, see Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department: Questions and Answers*, or Publication 750;
- any other record or document which, given the nature of your business, would be necessary to prove that you have collected and paid the proper amount of sales tax due.

If you are an operator of a parking facility in Manhattan, you have certain additional record-keeping requirements. For more information about these requirements, see Form TP-832, *Special Requirements for Parking Facilities Operators* Located in New York County (Manhattan) Made Permanent*, which is available on the Tax Department's Web site.

Failure to keep adequate records

If your business records are adequate as described above, and the Tax Department conducts a sales tax audit on your business, the department must conduct a full audit examination using all of your business records, unless you consent to a test period or statistical sample audit.

However, if the department auditors properly conclude that your business records are not adequate, they may use an estimated audit method that is reasonably designed to calculate your state and local sales tax liability. If you wish to contest the method, you must prove by clear and convincing evidence that the method is unreasonable or that the resulting liability is wrong. The liability would not be canceled even if you can show that the Tax Department could have used a more accurate method, as long as the method used was reasonable.

You should also be aware that you may be held personally responsible for the sales tax liability of your business (see *Responsible Persons* below). In addition, your failure to keep adequate records may result in the suspension or revocation of your *Certificate of Authority*. **If your *Certificate of Authority* is suspended or revoked, you must discontinue making taxable sales of tangible personal property or services or tax exempt purchases, such as purchases for resale, which means you may be out of business.**

Filing and Payment Requirements

As a registered sales tax vendor, you must file timely sales tax returns and pay any sales tax due. **You must file a sales tax return on time, even if you have no tax due for the filing period.** You can electronically file a no tax due return on the Tax Department's Web site by clicking on the *Online Tax Center*. Your sales tax return is due not later than 20 days after the end of the period to which it relates.

When you first become a registered sales tax vendor, you will be classified as a quarterly filer unless you meet the conditions to be automatically classified as an annual filer. To be classified as an annual filer, you must indicate on your application for registration that you are a manufacturer or wholesaler that is not required to collect or remit any sales or use tax.

Sales tax 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). Therefore, if you are a quarterly filer, you must file your sales tax returns by June 20, September 20, December 20, and March 20 each year. If you are classified as an annual filer, your annual return will cover the period March 1 through February 28 or 29. Therefore, your return is due on March 20 of each year.

You will be reclassified to monthly filing status if your combined total of taxable receipts, purchases subject to tax, rents, and amusement charges is \$300,000 or more in a quarter. The change to monthly filing status begins with the first month of the next sales tax quarter. You must then continue to file monthly returns until you no longer meet the above conditions for four consecutive quarters. If you need to obtain forms, see the information in the *Need Help?* section on page 6 of this publication.

You will be reclassified as an annual filer if your total tax due does not exceed \$3,000 for the four most recently filed quarterly periods. The Tax Department will notify you if you are reclassified as an annual filer.

For more detailed information on your filing requirements as a sales tax vendor, please see Publication 750.

Responsible Persons

The Tax Law imposes personal responsibility for payment of sales tax on certain owners, officers, directors, employees, partners, or members (responsible persons) of a business that has an outstanding sales tax liability. Being personally liable means that your personal assets, including your home, car, savings accounts, etc., could be taken by the Tax Department to satisfy the sales tax liability of your business. You can be held personally responsible even if you have an employee or an accountant handle your sales tax matters. In addition, you can be held personally responsible even though your business is a corporation or a limited liability company.

Failure to Comply with Vendor Responsibilities

If you do not pay the proper amount of sales tax due on time, you will be charged interest, compounded daily, on the amount you didn't pay. In addition, various civil and criminal penalties may apply if you fail to comply with your responsibilities as a vendor required to collect sales tax.

For example, it is a crime for a sales tax vendor to:

- willfully file a return that the vendor knows contains false information;
- willfully sell property or services subject to tax without having a valid *Certificate of Authority*;
- willfully fail to keep any required records;
- willfully fail to collect sales tax from a customer; or
- willfully fail to pay any sales tax collected in their capacity as a trustee of the State.

Following the guidance in this publication and other sales tax information available from the Tax Department will help you to comply with your sales tax responsibilities. Understanding your sales tax responsibilities will help you to avoid the payment of any interest or penalties. Our goal is that all vendors meet their tax obligations and voluntarily collect and pay the correct amount of sales tax due on time.

Show and Entertainment Promoters

If, during a calendar year, a show promoter operates four or more shows, or leases property or space to others who, in aggregate, operate four or more shows, then the show promoter must file Form DTF-723, *Application for Show Permit and Notice of Show*, at least ten days before the fourth show. Further, 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. For more information on show promoters, see Publication 750.

If sales of tangible personal property are going to be made at one or more entertainment events, the entertainment promoter must file Form DTF-728, *Application for Entertainment Promoter Certificate*, at least 20 days before the first entertainment event is held. 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 registered as a vendor. For more information on entertainment promoters, see Publication 750.

Purchase or Sale of a Business or its Assets

If you are registered as a sales tax vendor and you plan to sell your business assets other than in the ordinary course of business, you must give the prospective purchaser Form TP-153, *Notice to Prospective Purchasers of a Business or Business Assets*. Form TP-153 advises a purchaser of his or her responsibility to file Form AU-196.10 *Notification of Sale, Transfer or Assignment in Bulk*, with the Tax Department. A purchaser who fails to file Form AU-196.10 can become subject to liabilities for taxes owed by a seller, even if the seller did not give Form TP-153 to that purchaser. For more detailed information on the purchase or sale of a business or its assets, see Publication 750.

How to Obtain Additional Information

This publication provides general information to business owners and responsible persons regarding their responsibilities under the New York State and local sales tax laws. The Tax Department also publishes many industry-specific sales tax publications and other sales tax guidance documents to assist you. You may access the Tax Department's Web site at www.nystax.gov to obtain copies of our publications, forms, and other guidance documents, or visit our Business Taxpayer Answer Center to find answers or to ask questions. For further assistance, see the *Need help?* section on page 6.

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

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
Sales Tax Information Center: 1 800 698-2909
From areas outside the U.S. and outside Canada: (518) 485-6800



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, please call 1 800 972-1233.