



Sales and Use Tax Penalties

Introduction

To make taxable sales, your business must have a valid *Certificate of Authority* from the Tax Department. Once you receive your *Certificate of Authority*, you have various responsibilities under the sales tax laws. If you fail to follow the sales tax laws, you may be subject to civil or criminal penalties. This bulletin is an overview of those penalties.

Penalties for late filing and failing to file a return	
Civil Penalties	
If you:	the penalty is:
fail to file or fail to timely file a return with no tax due. (Tax Law, sec. 1145(a)(1)(i))	\$50.
file a return late by 60 days or less. (Tax Law, sec. 1145(a)(1)(i))	10% of the tax due for the first month plus 1% for each additional month or part of a month not to exceed 30% of the tax due. However, this penalty cannot be less than \$50.
fail to file a return or file a return more than 60 days late . (Tax Law, sec. 1145(a)(1)(i))	the greater of: <ul style="list-style-type: none"> • 10% of the tax due for the first month, plus 1% for each additional month or part of a month, not to exceed 30% of the tax due; • \$100, or 100% of the amount required to be shown as tax on the return, whichever is less; or • \$50.
Crimes and Other Offenses	
You may be subject to fines and a jail sentence, if you:	
<ul style="list-style-type: none"> • fail to make, render, sign, certify, or file any return or report. (Tax Law, sec.1801(a)(1) and sec.1802-1807) 	

Penalties for failing to collect tax
Crimes and Other Offenses
You may be subject to fines and a jail sentence, if you:
<ul style="list-style-type: none"> • willfully fail to charge separately the state and local sales tax on any bill, statement, or receipt; (Tax Law, sec. 1817(d)), or • willfully fail to collect state and local sales tax required to be collected. (Tax Law, sec.1801(a)(6) and sec.1802-1807)

Penalties for failing to pay or pay over tax	
Civil Penalties	
If you:	the penalty is:
file a return on time but do not remit the tax due. (Tax Law, sec. 1145(a)(1)(i))	10% of the tax due for the first month, plus 1% for each additional month or part of a month not to exceed 30%.
omit more than 25% of the taxes required to be shown on the return. (Tax Law, sec. 1145(a)(1)(vi))	10% of the tax you failed to report. (The amount of the omission is reduced to the extent there is substantial authority or adequate disclosure for any part of the amount.)
fraudulently fail to pay or pay over any tax due. (Tax Law, sec. 1145(a)(2))	an amount equal to twice the amount of the tax not paid, plus interest on the unpaid tax, paid at the greater of 14 ½%, or the rate set by the Tax Commissioner.
Crimes and Other Offenses	
You may be subject to fines and a jail sentence, if you:	
<ul style="list-style-type: none"> • willfully fail to file a bond or other security, or deposit taxes, in any banking institution as required; (Tax Law, sec. 1817(e)) • willfully fail to remit the state and local taxes collected; (Tax Law, sec. 1801(a)(5) and sec. 1802-1807), or • with intent to evade tax, willfully fail to pay any tax. (Tax Law, sec. 1801(a)(7) and sec. 1802-1807) 	

Penalties for miscellaneous tax fraud acts (other tax fraud acts are listed in the appropriate specific category) Note: These penalties apply to vendors, purchasers, and tax return preparers.
Crimes and Other Offenses
You may be subject to fines and a jail sentence, if you:
<ul style="list-style-type: none"> • fail to make, render, sign, certify, or file any tax return or report; (Tax Law, sec. 1801(a)(1) and sec. 1802-1807), or • engage in any act to defraud the state or its political subdivisions or a government instrumentality within the state by false or fraudulent pretenses, representations, or promises as to any material matter in connection to sales and use taxes. (Tax Law, sec. 1801(a)(4) and sec. 1802-1807)

Penalties related to a <i>Certificate of Authority</i>	
Civil Penalties	
If you:	the penalty is:
fail to display a <i>Certificate of Authority</i> . (Tax Law, sec. 1145(a)(4))	\$50.
do any of the following without a required <i>Certificate of Authority</i> : <ul style="list-style-type: none"> • sell taxable tangible personal property or taxable services, • sell automotive fuel, • receive amusement charges, • operate a hotel, • purchase or sell tangible property or services for resale, or • sell cigarettes. (Tax Law, sec. 1145(a)(3)(i))	up to \$500 for the first day on which sales or purchases are made, plus up to \$200 for each subsequent day, not to exceed \$10,000.
take possession of, or pay for, business assets in a bulk sales transaction without a required <i>Certificate of Authority</i> . (Tax Law, sec. 1145(a)(3)(iii))	up to \$200.
are an entertainment promoter and you authorize a person without a <i>Certificate of Authority</i> to make taxable sales at your event. (Tax Law, sec. 1145(f))	up to \$10,000 for each event.
fail to surrender your <i>Certificate of Authority</i> once a notice of revocation or suspension becomes final. (Tax Law, sec. 1145(a)(3)(ii))	up to \$500 for the first day of such failure, plus up to \$200 for each subsequent day the certificate is not returned, not to exceed \$10,000.
Crimes and Other Offenses	
You may be subject to fines and a jail sentence, if you:	
<ul style="list-style-type: none"> • fail to surrender your <i>Certificate of Authority</i> once a notice of revocation or suspension becomes final (Tax Law, sec. 1817(a)); • are an entertainment promoter, and you willfully authorize a person without a <i>Certificate of Authority</i> to make taxable sales at your event; (Tax Law, sec. 1817(i)), or • do any of the following without a required <i>Certificate of Authority</i>: <ul style="list-style-type: none"> • sell taxable tangible personal property or taxable services, • receive amusement charges, • operate a hotel, • purchase or sell tangible property or services for resale, or • sell automotive fuel. (Tax Law, sec. 1817(a)) 	

Penalties for document and record-keeping violations		
Civil Penalties		
If you:	the penalty is:	
fail to make your records available in an auditable form. (Tax Law, sec. 1145(j))	up to \$1,000 for each quarter or part of a quarter of failure.	
fail to make or maintain records or make them available to the Tax Department. (Tax Law, sec. 1145(i))	up to \$1,000 for the first quarter or part of a quarter of failure, plus up to \$5,000 for each additional quarter or part of a quarter that failure occurs.	
elected to maintain your records in an electronic format and you fail to provide the records in an electronic format upon request. (Tax Law, sec. 1145(k))	up to \$5,000 for each quarter or part of a quarter of failure.	
issue a false or fraudulent resale or other exemption certificate or document with intent to evade tax. (Tax Law, sec. 1145(a)(5))	\$50 for each document misused, plus 100% of the tax due had there been no misuse.	
fail to include the name or the <i>Certificate of Authority</i> number of any itinerant vendor (e.g., street peddlers, show vendors, or similar vendors who transport a supply of tangible personal property from place to place) or information related to the sales for resale made to the vendor, or fail to include such information which is true and correct, in the report required with respect to your sales in New York State to itinerant vendors. (Tax Law, sec. 1145(h)(1))	up to \$50 for each vendor that is not included on the report (whether or not the report is filed); and will not exceed \$5,000 for any 12-month period (from June 1 to May 31). (Tax Law, sec. 1145(h)(3))	if both the Tax Law section 1145(h)(1) and 1145(h)(2) penalties are imposed, the sum of those penalties will not exceed \$5,000 for any 12 month period (from June 1 to May 31). (Tax Law, sec. 1145(h)(3))
fail to timely file a report with respect to itinerant vendors. (Tax Law, sec. 1145(h)(2))	up to \$500 for each failure.	
submit a false or fraudulent document to the Tax Department. (Tax Law, sec. 1145(j))	\$100 for each false or fraudulent document, or \$500 for each false or fraudulent tax return.	
Crimes and Other Offenses		
You may be subject to fines and a jail sentence, if you:		
<ul style="list-style-type: none"> • willfully fail to keep the required records; (Tax Law, sec. 1817(g)) • willfully file or submit a return, report, statement, or other document that you know contains any materially false or fraudulent information, or omits any material information; (Tax Law, sec. 1801(a)(2) and sec. 1802-1807) • knowingly supply or submit false or fraudulent information in connection with any return, audit, investigation, or proceeding, or you willfully fail to supply information within the time required; (Tax Law, sec. 1801(a)(3) and sec. 1802-1807), or • issue an exemption certificate, interdistributor sales certificate, resale certificate, or other document which can provide evidence that taxes do not apply to a transaction which you do not believe to be true and correct as to any material matter, which omits any material information, or which is false, fraudulent, or counterfeit. (Tax Law, sec. 1801(a)(8) and sec. 1802-1807) 		

Penalties for third parties	
Civil Penalties	
If you are one of the following:	
<ul style="list-style-type: none"> • an insurer making payments to vendors for motor vehicle repairs, • a registered franchisor with at least one franchisee required to be registered as a sales tax vendor, or • a wholesaler making certain sales of alcoholic beverages without collecting sales or use taxes. 	
and you fail to:	the penalty is:
provide required or accurate information with your information return for a vendor, operator, or recipient. (Tax Law, sec. 1145(i)(1))	\$500 for ten or fewer failures, and up to \$50 for each additional failure.
file an information return. (Tax Law, sec. 1145(i)(2))	up to \$2,000 for each failure, with a minimum penalty of \$500.
	In no event will the 1145(i)(1) penalty or the sum of the 1145(i)(1) and 1145(i)(2) penalty exceed \$10,000 for an annual filing period. (Tax Law, sec. 1145(i)(3))

Penalties for tax preparers	
Civil Penalties	
If you:	the penalty is:
aid or assist in the preparation or presentation of fraudulent sales and use tax returns, reports, statements, or other documents. (Tax Law, sec. 1145(i)) (See Penalties for miscellaneous tax fraud acts for Crimes and Other Offenses)	up to \$5,000.

Penalties for violations by show and entertainment promoters	
Crimes and Other Offenses	
You may be subject to fines and a jail sentence, if you:	
<ul style="list-style-type: none"> • as a show promoter, willfully fail to file a required notice of show or operate a show (or rent, lease, or grant a license to use space for a show) without obtaining a permit from the Tax Department; (Tax Law, sec. 1817(c)), or • as an entertainment promoter, willfully authorize a person to make sales of tangible personal property at an entertainment event without first requiring the vendor to obtain a <i>Certificate of Authority</i> or you fail to obtain an entertainment promoter certificate. (Tax Law, sec.1817(i)) 	

Penalties for motor fuel, diesel motor fuel, and cigarette violations	
Civil Penalties	
If you:	the penalty is:
are a responsible person who fails to pay the prepaid sales tax to the Tax Department on motor fuel, diesel motor fuel, or cigarettes. (Tax Law, sec. 1145(e))	an amount equal to the total amount of tax not paid.
fail to file a return or to pay the sales tax required to be prepaid on motor fuel or diesel motor fuel within the time required. (Tax Law, sec. 1145(c))	an amount equal to the total amount of tax not paid.
are an owner of a filling station and you willfully and knowingly have in your custody, possession, or control motor fuel or diesel motor fuel on which the prepaid tax has not been assumed or paid by a distributor or was required to have been passed through to you but was not included in the cost of the fuel to you. (Tax Law, sec. 1145(a)(1)(vii))	an amount equal to twice the prepaid sales tax not assumed or paid or included in the cost of the fuel.
are required to collect tax on the sale of cigarettes at retail and you willfully and knowingly have in your custody, possession or control cigarettes on which the prepaid sales tax has not been assumed or paid by a licensed agent or the prepaid sales tax was required to have been passed through to you but was not included in the cost of the cigarettes to you. (Tax Law, sec. 1145(a)(1)(viii))	an amount equal to twice the prepaid sales tax not assumed or paid or included in the cost of the cigarettes.
Crimes and Other Offenses	
<p>You may be subject to fines and a jail sentence, if you:</p> <ul style="list-style-type: none"> • are an owner of a filling station and you willfully and knowingly have in your custody, possession or control motor fuel or diesel motor fuel on which the prepaid tax has not been assumed or paid by a distributor or was required to have been passed through to you and was not included in the cost of the fuel to you; (Tax Law, sec. 1817(f)) • are required to collect tax on the sale of cigarettes you sell at retail and you willfully and knowingly have in your custody, possession or control cigarettes on which the prepaid sales tax has not been assumed or paid by a licensed agent or was required to have been passed through to you and was not included in the cost of the cigarettes to you; (Tax Law, sec. 1817(k)), or • falsely or fraudulently make, alter, or counterfeit any cigarette stamp; cause stamps to be falsely or fraudulently made, altered or counterfeited; or knowingly and willfully possess, offer for sale, purchase, or pass such stamps; or knowingly and willfully possess cigarettes in packages bearing such false, altered, or counterfeited stamps; also if you knowingly and willfully make, cause to be made, purchase or receive or possess any device for forging or counterfeiting stamps. (Tax Law, sec. 1817(l)) 	

Penalties relating to the service of providing parking, garaging, or storing of motor vehicles in Manhattan	
Civil Penalties	
If you:	the penalty is:
are required to collect taxes on parking in Manhattan, and you fail to keep any of the additional records required. (Tax Law, sec. 1145(g)(1))	up to \$500 where the records have not been kept for a month or part of a month.
are required to collect taxes on parking in Manhattan, and you fail to consent to a request by the Tax Department to conduct a walkabout observation or interfere with a walkabout observation of the parking facility. (Tax Law, sec. 1145(g)(2))	up to \$500 for the first day of failure, and up to \$1,000 for each subsequent day of failure. The penalties cannot exceed \$10,000 in total.
Crimes and Other Offenses	
You may be subject to fines and a jail sentence, if you:	
<ul style="list-style-type: none"> are required to collect taxes on parking in Manhattan, and you willfully fail to include all required information required to be shown on a ticket or other memorandum. (Tax Law, sec. 1817(j)) 	

We may reduce or eliminate some penalties if reasonable cause is shown

If you can show that your failure to comply with the sales and use tax laws was due to reasonable cause, and not due to willful neglect, we may reduce or eliminate the appropriate civil penalties noted in this bulletin. See Section 2392.1 of the Regulations (Title 20 NYCRR).

The Collection Process

See [Publication 131](#), *Your Rights and Obligations Under the Tax Law*, for an overview of the legal enforcement procedures the Tax Department may use to collect your tax debt if you fail to pay, or fail to make arrangements to pay, an assessed tax liability.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

References and other useful information
Tax Law: Sections 1145; 1801; 1802-1807; and 1817
Regulations: Section 2392.1
Publications: Publication 131 , <i>Your Rights and Obligations Under the Tax Law</i>
Bulletins:
Record-Keeping Requirements for Sales Tax Vendors (TB-ST-770)
Filing Requirements for Sales and Use Tax Returns (TB-ST-275)
Do I Need to Register for Sales Tax? (TB-ST-175)
How to Register for New York State Sales Tax (TB-ST-360)