

VENDOR RESPONSIBILITIES IN THE COLLECTION OF SALES TAX

Who Must Collect the Tax

For sales and use tax purposes, any vendor of taxable tangible personal property or services; every recipient of taxable admissions, amusement charges, or membership dues; and every operator of a hotel is a person "required to collect tax." An officer or employee of a corporation engaged in taxable activities, or of such dissolved corporation, who as officer or employee is under a duty to act for the corporation is also considered a person required to collect tax, as is every person who is a member of a partnership engaged in taxable activities.

When Must the Tax be Collected

Every person required to collect sales tax must collect the tax from customers when collecting any purchase price, amusement charge or rent to which the tax applies.

When Must the Transaction be Reported

When a vendor makes a taxable sale, he must report the transaction on the sales tax return covering the period in which the sale is made, even if payment is not received at the time of sale. The vendor must also remit the full amount of tax with the return, whether or not any money was collected at the time of sale.

Who is Legally Liable for the Tax

Any person who is required to collect sales tax is also personally liable for the tax imposed, collected or required to be collected under the Sales Tax Law. Such person has the same right to collect the tax from a customer as he has to collect the purchase price of the property or service sold. If it becomes necessary to take legal action in order to collect the tax, the tax commission must be included in the action or proceeding.

Supporting Records to be Maintained

Every person required to collect any tax imposed by the Sales Tax Law acts as a trustee for New York State, and as such is required to maintain supporting records which will properly account for taxes collected or required to be collected. The vendor's liability exists whether or not the tax imposed is collected. The vendor who is unable to collect tax from a customer because the amount of the sale is below the amount for which collection is permitted must pay sales tax on the total amount of all such sales, keep substantiating records, and make all records available for examination at any time.

Improper Advertising

When a person is required to collect sales tax, he may not advertise or suggest to any purchaser or to the public in general, directly or indirectly, that the tax is not considered an element of the selling price. Neither should the vendor indicate that he will pay the tax, or that the tax will be refunded. Such advertising or refunding is illegal.

Example (illegal advertising)

Purchase a new refrigerator at Z Q Y's and pay no sales tax.

If you purchase a new refrigerator and take delivery before December 25th, Z Q Y's will pay all sales tax.

Proper Receipts, Sales Slips, or Other Statements

When a vendor provides the customer with a written receipt (e.g., sales slip, invoice, receipt or other statement or memorandum), the tax must be stated, charged, and shown separately on the first of such documents given to the customer. The words "tax included" or similar words on a sales slip or other document do not constitute the separate statement of tax. When the tax is not separately shown, the entire amount charged is deemed to be the sales price of the property sold or services rendered.

Examples:

Correct Billing

Sales price of merchandise	\$30.00
Sales tax (7% area)	<u>2.10</u>
Total charge	<u><u>\$32.10</u></u>

Incorrect Billing

Total price of merchandise (tax included) \$32.10

(Upon audit, the vendor will be held taxable on \$32.10 if he reports this amount on his sales and use tax return and his records do not show the tax separately stated.)

Unit Price Billing

If a vendor uses the "unit price" method of billing and gives no written receipt to the customer, the vendor must visibly display to all customers a sign stating that the prices of all taxable items include sales tax. The unit price is the price, including sales tax, at which the sale is recorded.

Proper Sales Tax Exemption Documents

The Department of Taxation and Finance provides various documents for use by purchasers who are entitled to an exemption from sales and use tax. When a vendor is furnished with a properly completed exemption document, the burden of proving a transaction is exempt lies solely with the customer. The vendor who accepts a properly completed exemption document from a customer is not required to collect tax, but must retain all such exemption documents as proof of exempt transactions. Please note that the exemption document received must have some relationship to sales documents prepared for the same transaction (for example, purchaser name and exemption number, if appropriate). When a vendor receives no exemption documents or accepts an improperly completed exemption document, such vendor will be held liable for the tax.

An exemption document is considered to be properly completed when it contains the following:

1. Date prepared.
2. Name and address of purchaser
3. Name and address of vendor.
4. Signature of purchaser or purchaser's authorized representative.
5. If required on the form, the identification number of purchaser as shown on the Certificate of Authority or the exempt organization number as shown on the Exempt Organization Certificate.
6. Any other information required for the completion of a particular document, according to the instructions on such document.

Listed below are the most frequently used exemption documents:

ST-119.1	Exempt Organization Certification
ST-120	Resale Certificate
ST-120.1	Contractor Exempt Purchase Certificate
ST-121	Exempt Use Certificate
ST-124	Certificate of Capital Improvement
ST-125	Farmer's Exemption Certificate
ST-126	Certificate of Diplomatic and Consular Tax Exemption
ST-129	Exempt Certificate - Tax on Occupancy of Hotel Rooms
TP-156.9	Certificate of Sales Tax Exemption for Sales on Reservations to Resident Indians

A purchaser may also use a Direct Payment Permit, Form AU-297, to make purchases without payment of sales tax. This permit is not an exemption document. Holders of this permit have been authorized by the Tax Department to make direct payment of sales and use tax to the Tax Department in lieu of payment to the vendor. A vendor who accepts a Direct Payment Permit from a purchaser must retain this document along with his other sales tax records.

Sales and use tax records must be retained and made available for inspection and examination by authorized representatives of the Tax Department for a period of three years from the due date of the return to which they relate, or the date of filing, if later.