

Additional Guidance Relating to the New Requirement for the Filing of Information Returns for Franchisors

Introduction

This memorandum provides additional and revised guidance relating to the new requirement for the filing of information returns for franchisors. It supplements previously issued TSB-M-09(9)S, *New Requirement for the Filing of Information Returns for Franchisors*.

Extension of time to file information returns

If a franchisor is unable to obtain or compile the required information by the due date of any information return, the franchisor may apply for an automatic 90-day extension of time to file the return. The application must be made electronically on or before the due date of the return. The application(s) will be made available on the Tax Department's Web site during the week of September 1, 2009. For additional information on how to apply for the extension, go to the department's Web site at www.nystax.gov.

Waiver of penalties in certain cases

In some cases, the franchisor must obtain information for the return from the franchisee (e.g., the franchisee's legal name). If it is subsequently determined that the information obtained from the franchisee is incorrect, the department will waive the penalty for failure to provide information that is true and correct if the franchisor did not know or have reason to know that the information was not true and correct.

Modification of the requirement to submit information relating to gross sales and sales made by suppliers to each franchise location

TSB-M-09(9)S requires franchisors to report "gross sales in New York State for each franchise location as reported to the franchisor for the period covered by the return." To clarify this requirement, it is the department's position that gross sales information need only be reported to the extent that the franchisee has reported that information to the franchisor.

TSB-M-09(9)S also required reporting of the "amount of royalty payments, if any, for each franchise location, made to the franchisor," and "the royalty percentage of gross sales reported." However, in those cases where the royalty payments are not based on gross sales of the franchisee, the department will not require the reporting of the amount of the royalty payments. For example, in cases where the franchise fee is a fixed amount per year, a set dollar amount per room, or is included in the price of supplies sold to the franchisee, the franchisor will not be required to submit royalty payment information for those franchisees. However, as indicated in TSB-M-09(9)S, the franchisor, in these cases, must provide details as to how the franchisee fee, royalties or other fees are determined.

In addition, the following information, which is listed under “Franchise information” on page 2 of TSB-M-09(9)S, is no longer required: (1) “gross sales in New York State for each franchise location as audited by the franchisor if different than reported by the franchisee” and (2) “the amount of any sales made to each franchise location by any supplier designated by the franchisor.”

The revised reporting requirements noted above will apply to the first information return period due September 21, 2009, and any subsequent reporting periods.

Future updates and additional information

Any future updates and additional information regarding these information returns will be available on the Tax Department’s Web site at www.nystax.gov.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.